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NATURAL GAS POLICY ACT AMENDMENTS OF 1983

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Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 1715]

The Committee on Energy and Natural Resources, having considered the same, reports without recommendation an original bill (S. 1715, to amend the Natural Gas Policy Act of 1978, to protect consumers from those price increases that would occur because of market distortions as a consequence of current regulation of natural gas prices, to permit natural gas contracts to reflect free market prices, to provide for a phased deregulation of natural gas prices in order to achieve a free market by a date certain, to eliminate incremental pricing requirements for natural gas, to eliminate certain restrictions on the use of natural gas and petroleum, and for other purposes.

I. PURPOSE OF MEASURE

The short title of the bill is the "Natural Gas Policy Act Amendments of 1983". The purpose of the bill, as reported by the Committee on Energy and Natural Resources, is to amend the Natural Gas Policy Act of 1978, and related measures, to protect consumers from those price increases that would occur because of market distortions as a consequence of current regulation of natural gas prices, to permit natural gas contracts to reflect free market prices, to provide for a phased deregulation of natural gas prices in order

S313-23

to achieve a free market by a date certain, to eliminate incremental pricing requirements for natural gas, to eliminate certain restrictions on the use of natural gas and petroleum, and for other purposes.

II. Summary of Major Provisions

The major provisions of the Natural Gas Policy Act Amendments of 1983, as reported by the Committee, are as follows:

TITLE I—TRANSITIONAL PRICE AND CONTRACT PROVISIONS

Section 101 adds new section 131 to the Natural Gas Policy Act of 1978 ("NGPA"). Section 131 provides transitional price provisions that will operate upon enactment for certain first sales until such first sales of natural gas are no longer subject to Federal price controls.

Section 131 establishes a price adjustment mechanism applicable to certain first sales of natural gas for resale. If both parties to a natural gas contract wish to remain under that contract, they may do so. If either party to a contract makes the necessary election, prices would be adjusted by means of "ramp up" and "ramp down" pricing mechanisms. If neither party makes such an election, the parties would remain under their existing contract. High priced natural gas would be ramped down, until the price paid reaches the applicable price indicator. This adjustment would take twelve months. Low priced natural gas would be ramped up, until the price paid reaches the applicable price indicator. This adjustment would take thirty-six months. The prices would remain at the applicable price indicator for an additional six month period before complete decontrol would occur.

At specific times during the ramp up or ramp down, and for a period of one year at the end of the ramp, either party to a contract could terminate the contract, subject to certain supply and purchase obligations.

The applicable price indicator would be established in two parts. For the six months beginning the first day of the second full month after the date of enactment a temporary price indicator (TPI) would be in effect. It would be equal to the NGPA section 103 price for natural gas.

Thereafter, a free market price indicator (FMPI) would go into effect. It would be based on the volume weighted average price of "new-new gas" contracts including imported gas.

Section 102 adds new section 316 to the NGPA. Section 316 establishes a mechanism by which take-or-pay percentages for existing natural gas purchase contracts could be reduced, at the option of the purchaser, during the 3 years following enactment. The minimum take could be reduced to as little as 50 percent of deliverability during the first year, 60 percent during the second year, and 70 percent during the third year. Volumes not taken could be sold to another purchaser.

Section 103 adds new sections 317 and 318 to the NGPA. Section 317 establishes a market out authority whereby either party to an existing contract for the first sale for resale of natural gas may exercise a unilateral right to terminate the contract. Section 318 es-

tablishes a "right of first refusal" or a "right of first offer" for the purchaser which could be exercised, under certain circumstances, after termination of the contract.

Section 104 adds a new section 319 to the NGPA. Section 319 requires pipelines to transport natural gas for others, if the gas is released take-or-pay gas, or if the gas was subject to a contract terminated under section 131.

TITLE II—REMOVAL OF WELLHEAD PRICE CONTROLS AND REPEAL OF JURISDICTION OVER CERTAIN FIRST SALES

Section 201 adds new subsections 121 (f) and (g) to the NGPA. Subsection (f) provides for immediate deregulation of three categories of natural gas sold under contracts for the first sale for resale:

(a) "New-new gas"—natural gas sold under contracts entered into after the date of enactment;

(b) "Renegotiated gas"—natural gas sold under contracts renegotiated after the date of enactment if the new renegotiated contract so provides; and

(c) "Released take or pay gas"—volumes of natural gas previously sold under a contract which are released from that contract because the pipeline exercises the take-or-pay reduction mechanism established by the bill.

Subsection (g) provides for removal of wellhead price controls on all remaining categories of natural gas sold. Gas subject to the phasing provisions would be deregulated upon expiration of the price adjustment mechanism discussed below.

Section 203 repeals provisions of the NGPA that allow reimposition of natural gas price controls by the President, subject to a one-House veto, or by Congress, by concurrent resolution.

TITLE III—LIMITATIONS ON PASSTHROUGH OF CERTAIN PURCHASED GAS COSTS

Section 301 amends section 601 of the NGPA to add a "prudency" test for pipeline purchases of natural gas under contracts entered into or renegotiated after the date on which the free market price indicator goes into effect.

It also requires a dollar for dollar passthrough for savings in purchased gas costs recognized as a result of the application of take-or-pay reductions, price reductions due to the operation of the price adjustment mechanism, or any other purchased gas cost reductions.

It requires the Federal Energy Regulatory Commission (FERC) to review natural gas purchases by interstate pipelines if the average cost under new and renegotiated contracts entered into in any month exceeds 110 percent of the free market price indicator.

TITLE IV—REMOVAL OF IMPEDIMENTS TO INTERSTATE MOVEMENTS OF GAS

Section 401 adds a new section 121 to the NGPA. This contract carriage authorization requires interstate pipelines, intrastate pipelines, and local distribution companies, to transport natural gas for other purchasers. Detailed terms and conditions are imposed. Encouragement is given to voluntary transportation arrangements.

Financial incentives for pipelines to participate in contract carriage transportation are provided.

Sections 404 and 405 amend sections 311 and 312 of the NGPA. They provide FERC with authority to allow more flexible purchase, transportation, and sales arrangements between and among interstate pipelines, intrastate pipelines, and local distribution companies.

TITLE V—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Section 501 imposes a limitation on interstate pipeline sales to affiliated intrastate pipelines. Section 502 imposes restrictions upon off-system sales of natural gas by interstate pipelines. Section 503 provides a limited antitrust exemption to independent producers to develop cooperative associations and to carry out voluntary actions to market natural gas.

TITLE VI—REPEAL OF CERTAIN RESTRICTIONS ON NATURAL GAS AND PETROLEUM USE AND PRICING

Section 601 repeals certain provisions of the Powerplant and Industrial Fuel Use Act of 1978.

Section 602 repeals of the incremental pricing requirements for natural gas under the NGPA.

In addition to the Natural Gas Policy Act Amendments of 1983, the Committee adopted an amendment regarding natural gas imports to be offered as a Committee amendment on the Senate floor, if negotiations currently underway between private parties, and between officials of the United States and natural gas exporting countries do not succeed in lowering natural gas import prices sufficiently by the time the bill is considered by the Senate.

III. Background

INTRODUCTION

The Natural Gas Act of 1938 (NGA) gave the then Federal Power Commission (FPC) (now the Federal Energy Regulatory Commission) the authority and responsibility to regulate the interstate transportation and sales for resale of natural gas. The NGA also authorized the FPC to regulate those companies which engaged in FPC jurisdictional activities.

The NGA specifically excluded from the FPC's jurisdiction "the production or gathering of natural gas" (Section 1(b)). Initially, the Act was interpreted by the FPC and the courts as precluding FPC jurisdiction over wellhead prices. However, in the 1954 *Phillips* decision* the Supreme Court held that the Congressional intent behind the NGA necessitated full Federal regulation of the wellhead price of natural gas sold in interstate commerce.

One key consequence of the *Phillips* decision was the creation of a dual market in natural gas—the regulated interstate market versus the unregulated intrastate market. This decision eventually led to chronic and increasingly serious gas problems in the inter-

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954).

state market, culminating during the winter of 1976-77 with the severe gas shortages experienced in the Midwest and Northeast.

The Congress initially responded in January 1977 with enactment of the Emergency Natural Gas Act of 1977 and then turned its attention to the formulation of a more comprehensive solution. The result of this effort was the enactment of the Natural Gas Policy Act of 1978 (NGPA). Among other purposes, the NGPA was intended to eliminate the dual market for natural gas, to provide needed exploration and production incentives for new supplies of natural gas, and to provide a smooth transition to the partial decontrol of natural gas.

WELLHEAD PRICE REGULATION PRIOR TO THE NGPA (1954-1978)

The *Phillips* decision did not provide the FPC any additional guidance as to how it should regulate wellhead prices pursuant to the NGA. The only guidance is provided by NGA section 4(a) which indicates that the rates established pursuant to it must be "just and reasonable." Based on this standard, the FPC employed the cost-of-service methodology, traditionally used in utility rate regulation, for its wellhead price regulation. In general, cost-of-service price regulation provides a rate of return based on investment expenditures and production costs, rather than the price regulation based on market value or replacement cost.

Between 1954 and 1976 the FPC's wellhead price regulation went through several distinct phases. Initially the FPC attempted to regulate the wellhead price of gas on an individual producer cost-of-service basis. The sheer magnitude of this undertaking, however, made this approach impracticable: by 1960 there was an unmanageable backlog of 3,000 cases.

Consequently in 1960 the FPC discarded producer-by-producer regulation, and in its place began to regulate gas prices area-by-area. Under the area rate system of regulation, wellhead price ceilings were set for all gas produced within a specific geographical area based on average production costs and investment expenditures made by producers in that area.

Subsequently in 1974 the FPC again altered its rate setting methodology by employing for the first time, a single national ceiling price. This change was undertaken by the FPC in explicit recognition of the fact that FPC wellhead price regulations were holding the price of interstate gas artificially low, thereby adversely affecting supply and creating availability problems in the interstate market. In Opinion 699 the FPC noted that higher prices were needed to "provide the incentive necessary to encourage producers to undertake expanded exploration and development programs and to dedicate the natural gas discovered and produced as a result of those programs to the interstate market." The FPC issued its second, and last, national rate in 1976 in Opinions 770 and 770A. National rate hearings for 1977-78 were suspended pending the outcome of the Congressional debate which ultimately led to the enactment of the NGPA.

Prior to the enactment of the NGPA unregulated intrastate gas prices were substantially above regulated interstate gas prices. In 1963 gas sold in the intrastate market was priced 39 percent above

gas sold in the interstate market. This differential declined through 1972, after which it widened dramatically. The differential peaked in 1975 when the price of unregulated intrastate gas was nearly two and one-half times that of gas sold in the interstate market.

Due to this wide differential between gas prices allowed producers in the regulated interstate market and prices which purchasers were willing to pay producers in the unregulated intrastate market, there was an enormous incentive for producers to sell their gas in the intrastate market only and to sell only unmarketable surplus gas in the interstate market. Moreover, producers were reluctant to sell even their surplus gas in the interstate market because under the Federal regulatory scheme, once gas was sold in interstate commerce, the associated reserves were committed to the interstate market, and remained so in perpetuity, notwithstanding the expiration of the contract.

As a result of declining dedications of gas to the interstate market and ever increasing demand for gas in that market—both resulting from prices held artificially below market value—shortages of gas began to appear in the interstate gas market during the winter of 1972.

Over the next five years, these shortages steadily worsened and curtailment of interstate pipelines' supplies increased. During the unexpectedly severe winter of 1976–77 interstate curtailments totalled nearly 4 trillion cubic feet, resulting in factory and school closings in several Midwestern and Northeastern states. Congressional response to the worsening gas shortage in the interstate market led to the enactment in January 1977 of the Emergency Natural Gas Act, and the subsequent enactment in November 1978 of the Natural Gas Policy Act of 1978.

WELLHEAD PRICE REGULATION UNDER THE NGPA (1978–PRESENT)

The enactment of the Natural Gas Policy Act of 1978 fundamentally altered the structure of Federal wellhead price regulation. The NGPA created a comprehensive system for setting the wellhead price of almost all natural gas produced in the United States, thereby extending Federal price regulation to the hitherto unregulated intrastate market. It also established a timetable for the ultimate decontrol of a part of such gas.

The Natural Gas Act methodology of setting wellhead gas prices based on the historical cost of production was replaced in the NGPA with a system based mainly on (a) the physical characteristics of the well, (b) the deposit from which gas is produced, and (c) whether the gas had been committed to interstate sale. The NGPA specified ceiling prices for individual categories of natural gas, including a monthly adjustment factor to take into account the impact of inflation. Certain categories of gas are given an additional escalator to provide a real increase in price.

PRICING CATEGORIES

The 28 NGPA pricing categories can be classified into two general types: The first was designed to stimulate production by providing incentive prices for production of new and high-cost natural

gas. In order to qualify for these incentive prices, a producer must obtain a determination of eligibility from the appropriate jurisdictional agency. The incentive categories are:

—New natural gas (Section 102);
—New onshore production wells (Section 103);
—High-cost natural gas (Section 107); and
—Stripper well natural gas (Section 108).

The second type was generally designed to moderate price increases by limiting the price paid for older gas to levels generally equivalent to those in effect prior to the enactment of the NGPA. These categories essentially codified pre-existing FPC decisions establishing interstate prices and prices then being paid in the intrastate market. Qualification for these prices does not require a jurisdictional agency determination. These non-incentive categories consist of:

—Natural gas under existing interstate contracts (Section 104);
—Natural gas under existing intrastate contracts (Section 105);
—Natural gas under "rollover" contracts (Section 106); and
—Natural gas not specifically covered by any other section (Section 109).

CEILING PRICES

Under the NGPA, the FERC is required to compute and publish the maximum lawful prices along with the monthly equivalent of the annual inflation factor for each of the categories. The various NGPA wellhead pricing categories for natural gas, their July 1983 maximum lawful ceiling price, and date of deregulation, if applicable, are shown in Table I.

SCOPE OF PRICE DEREGULATION

Under the NGPA, high cost produced from (a) Devonian shale, (b) from geopressurized brine, (c) coal seams, and (d) from depths greater than 15,000 feet was deregulated on November 1, 1979. The following categories of gas sales also are scheduled by the NGPA to be deregulated on January 1, 1985:

—New natural gas, except for reservoirs discovered prior to July 27, 1976, an old OCS leases (Section 102);
—Gas not committed or dedicated to interstate commerce on April 20, 1977, produced from any new onshore production well at a completion location at a depth of more than 5,000 feet (Section 103); and
—Gas sold under an intrastate contract in existence on the date of enactment of the NGPA, the price of which will exceed $1 per million Btu's on December 31, 1984 (Sections 105 and 106).

Effective July 1, 1987, natural gas produced from any new onshore production well from a completion location at a depth of 5,000 feet or less, and not committed or dedicated to interstate commerce on April 20, 1977, would be deregulated.

Numerous other categories of gas would not be deregulated but would continue to be subject to the pricing categories established by the NGPA. These categories are:

—Reservoirs discovered after July 27, 1976, an old OCS leases (Section 102(d));

—Gas dedicated to interstate commerce before the date of enactment of the NGPA (Section 104);
—Interstate "rollover" contracts (Section 106);
—Intrastate gas with a contract price of less than $1 per million Btu's as of December 31, 1984 (Section 106);
—Certain kinds of high-cost natural gas (Section 107);
—Stripper well natural gas (Section 108); and
—Other categories of natural gas (Section 109).

TABLE I.—NATURAL GAS POLICY ACT MAXIMUM LAWFUL PRICES

Section of act and description	July 1983 maximum lawful prices per million Btu's	Date of deregulation	Gas category
102—New natural gas:			
$1.75 as of 4/20/77 plus monthly inflation and escalation adjustments.	$3.448	1/1/85	New onshore wells at least 2.5 miles from nearest market well or at least 1,000 feet deeper than any completion within 2.5 miles.
		1/1/85	New onshore reservoirs.
		1/1/85	New Outer Continental Shelf (offshore) leases effective on or after 4/20/77.
		Not deregulated	Reservoirs discovered after 7/27/76 on old offshore (OCS) leases.
103—New onshore production wells:			
$1.75 as of 4/20/77 plus monthly inflation adjustments.	2.792	.....	Wells with surface drilling starting after 2/19/77, satisfying applicable Federal or State well-spacing requirements and that are not within a proration unit.
		[a]1/1/85	Gas from wells deeper than 5,000 feet.
		[a]7/1/87	Gas from wells shallower than 5,000 feet.
104—Gas dedicated to interstate commerce before the NGPA enactment (11/9/78): The just and reasonable price as of 4/20/77 plus monthly inflation adjustment:			
	2.311	Not deregulated	Post-1974 gas.
	[b]1.956	Not deregulated	1973–1974 Biernium gas.
	[c]1.495		
	[b]1.099	Not deregulated	Replacement contract gas or recompletion gas.
	[c].840		
	[b].554	Not deregulated	Flowing gas.
	[c].469		
	[b].655	Not deregulated	Certain Permian Basin Gas.
	[c].577		
	[b].655	Not deregulated	Certain Rocky Mountain Gas.
	[c].554		
	[b].523	Not deregulated	Certain Appalachian Basin Gas.
	[c].487		
	[d].286	Not deregulated	Minimum Rate Gas.
105—Gas sold under existing intrastate contracts:			
The lower of (a) the contract price under the contact terms as of 11/9/78 (b) the Section 102 price.	.....	[f]1/1/85	If contract price was less than $2.076 on 11/9/78.
The higher of (a) the contract price as of 11/9/78 plus monthly inflation adjustment and (b) the Section 102 price.	.....	[f]1/1/85	If the contract price was more than $2.078 on 11/9/78.

TABLE I.—NATURAL GAS POLICY ACT MAXIMUM LAWFUL PRICES—Continued

Section of act and description	July 1983 maximum lawful prices per million Btu's	Date of deregulation	Gas category
106—Sales of gas made under "rollover" contracts:			
The higher of (a) the just and reasonable price as of the rollover date plus monthly inflation adjustment and (b) $.54 as of 4/77 plus montly inflation adjustment [d].	[b].858	Not deregulated	Interstate.
The higher of (a) the price paid under the expired contract as of the rollover date plus monthly inflation adjustment or (b) $1.00 as of 4/77 plus monthly inflation adjustment [i, d].	[g]1.595	[h]1/1/85	Intrastate.
107—High cost natural gas:			
Section 102 price or higher incentive price.	[m]	11/1/79	Gas produced from wells 15,000 feet or deeper drilled after 2/19/77.
Otherwise applicable or higher incentive price.	[m]	11/1/79	Gas produced from geopressured brine, coal seams and Devonian Shale.
	[n]	Not deregulated	Gas produced from tight sands.
	[o]	Not deregulated	Qualified production enhancement (only for 105 gas).
108—Stripper well natural gas:			
$2.09 as of 5/78 plus monthly inflation and escalation adjustments [k].	3.694	Not deregulated	Nonassociated natural gas produced at an average rate less than or equal to [illegible]0,000 cubic feet per day over a 90-day period.
109—Other categories of natural gas:			
$1.45 as of 4/77 plus monthly inflation adjustment.	2.311	Not deregulated	Prudhoe Bay Gas; Gas not otherwise covered.

[a] Beginning 1/1/85, gas from wells shallower than 5,000 feet receive a price midway between the price specified by this formula, and the 102 price.
[b] Small producers—independent producers not affiliated with a Class A natural gas pipeline company whose total jurisdictional sales on a national basis, including those by affiliated producers, do not exceed 10 Btu on a 14.73 pressure basis.
[c] Large producers—producers that are not small producers.
[d] Ceiling prices may be raised if just and reasonable.
[e] Interstate production from section 103 wells on dedicated acreage committed on 4/20//7.
[f] If contract price exceeds $1.00 by 12/31/84, except a price established under an indefinite price escalator clause.
[g] Or expired contract price, whichever is higher.
[h] If the price is more than a dollar on 12/31/84.
[i] Natural gas production in which a state government or an Indian tribe has royalty or other interest is to receive the section 102 price if it was not committed to interstate commerce on 11/8/78.
[j] High-cost provisions elective, i.e., do not apply if special tax provisions are utilized.
[k] These prices have been escalated monthly, in addition to the inflation adjustment factor. The initial escalation was 3.5 percent annually. In April, 1981 they began escalating by 4 percent annually.
[l] Dollars per thousand cubic feet.
[m] Market price.
[n] 200 percent of section 103 price.
[o] Section 109 price.

IV. NEED

OVERVIEW

It now appears that the Natural Gas Policy Act of 1978 (NGPA) is creating serious problems in the natural gas market; the principal evidence of which is that gas prices continue to rise despite an oversupply of natural gas. There is also some indication that the NGPA will not provide a smooth transition to partial decontrol; the principal evidence of which is the numerous distortions the NGPA has already created in the gas market.

In part the problems the NGPA has generated in the natural gas market are a result of unanticipated changes in the energy market.

In part the NGPA is not operating as originally designed. For example, NGPA was intended to provide gas consumers with the benefit of pre-NGPA inexpensive gas by never decontrolling this "old" gas. (Old gas constituted 70 percent of flowing gas supplies in 1981, and is estimated to constitute 44 percent in 1985 and 22 percent in 1990.) The framers of the NGPA expected that the benefits of the old gas price "cushion" would automatically be passed through by pipelines to their gas consumers. However, that has not happened.

What was not fully appreciated was that despite federal cost-passthrough regulations, pipelines could in effect use this "cushion" to subsidize the acquisition of new and deregulated gas supplies. This occurs as a result of "rolled in" gas pricing whereby a pipeline's customers are charged the average price of the gas they are consuming, rather than the marginal cost of new gas supplies.

The evidence of this phenomenon is quite startling: Pipelines have purchased decontrolled deep gas for as much as $11 per Mcf, rolled that gas into the pipeline's total gas purchases, and ultimately resold that $11 gas for less than a quarter of its cost. Similarly, Algerian liquefied natural gas is imported at nearly $7 per Mcf but sold for only a fraction of its cost.

A November 1981 Department of Energy analysis of the problems created by the NGPA and the alternative solutions concluded that:

> . . . [T]he NGPA is unlikely to capture the "price cushion" of old regulated gas for consumers. In a market containing the old cheap gas, deregulated prices must rise until average gas prices at retail match industrial fuel oil prices in order to balance gas supply and demand. Consequently, deregulated gas prices must absorb most of the old gas cushion in order to avoid artificial, Federal curtailment of gas use. (A Study of Alternatives to the Natural Gas Policy Act of 1978. U.S. Department of Energy: November 1981.)

These conclusions are also confirmed by a September 1982 Department of Energy study which found that the twenty largest interstate pipelines surveyed paid during the late 1981-early 1982 period an average of $1.27 per Mcf for old gas, $7.33 per Mcf for high-cost gas, and on average $2.19 for all gas purchased.

The NGPA was also predicated on assumptions about producer-pipeline gas supply contracting behavior which did not materialize. Following the enactment of the NGPA in 1978, pipelines were anxious to acquire new supplies of natural gas to prevent the recurrence of the severe supply shortages that struck several parts of the country during the winter of 1976–77. In their scramble to acquire new gas supplies, pipelines signed contracts which now compel them to purchase greater quantities of high-priced gas than their markets can absorb. In some cases these problems have become so severe as to force pipelines to unilaterally abrogate or modify their gas purchase contracts, regardless of their legal ability to do so.

A recent Department of Energy study found that post-NGPA contracts had take-or-pay provisions averaging from 76 percent for

NGPA section 107 gas contracts, to as high as 98 percent for NGPA section 108 gas contracts. In his testimony to the Committee, Secretary of Energy Donald Hodel noted that:

> [C]ontracts entered into during a period of perceived shortage (which was attributable to government price regulation), include take-or-pay requirements that are causing low-cost gas to be shut-in, since the older, low-cost contracts have lower take-or-pay requirements. During periods of falling demand, a pipeline cuts back first on purchases from contracts without high take-or-pay requirements—usually older, low-cost gas, which then winds up being shut-in.
>
> Consumers are paying higher prices for gas, as though additional gas supplies were not available. Pipelines are finding themselves bound by onerous contract terms they signed based on a belief in scarcity that the regulations fostered. These contracts have prices tied to artificial regulatory ceilings that keep prices rising, and they also have high take-or-pay provisions that encourage production of the most expensive supplies first while production of less costly supplies is reduced. These situations could not exist in a free market.

The aforementioned 1981 Department of Energy study on post-NGPA contract also found that 77 percent of the post-NGPA contracts for interstate gas had price provisions triggered upon deregulation in 1985. Nearly all (87%) of those post-NGPA interstate contracts containing a deregulation provision also contained a most-favored nation clause which ties the price of the gas under that contract to the highest price paid to gas producers elsewhere.

Many pipelines are already experiencing difficulties under existing contacts in reducing purchases from producers when their sales have declined due to the recession or, in some instances, fuel switching. Once partial decontrol occurs, many of the pricing provisions in natural gas sales contracts could become a serious problem. Price escalator clauses and area rate clauses in natural gas sales contracts would enable the price paid under the contract to increase dramaticaly, to the point where the pipeline would find it impossible to market the gas.

In many cases, these automatic price increases have already resulted in delivered gas prices exceeding the price of altenative fuels. This has been a particular problem in the industrial sector which accounts for about half of all natural gas consumed in the United States. Since 1978, the year in which the NGPA was enacted, natural gas consumption by the industrial sector has declined by nearly 20 percent. As a result of this decline fixed distribution system costs have had to be spread over a smaller base. As a result, gas prices increased further.

Moreover, these price increases have had serious consequences on gas consumers throughout the Nation. Since 1978, the average price of natural gas for home heating has increased 134 percent; the average price of natural gas used by electric utilities has increased by 130 percent, resulting in higher electricity prices. Overall, these gas price increases have directly and indirectly had

significantly negative impacts on all gas consumers—residential, commercial and industrial—and have undoubtedly contributed to the economic downturn from which the Nation is only now beginning to recover.

CONCLUSIONS

Gas prices are continuing to increase dispite a glut of gas on the market. Existing law and regulations create a system which distorts gas markets and results in unnecessarily high gas prices. The net result is an inflexible system which prevents producers, pipelines, and distribution companies from adjusting to changing market conditions.

Pipelines are bound to contracts with producers which automatically provide for higher prices; higher prices mean reduced gas demand which further increases the consumer price of gas due to load loss. Although pipelines have attempted to reduce their gas purchase costs as much as possible through the exercise of existing contract provisions, to date the reduction has been insufficient. Without a change in existing law gas prices could continue to escalate.

As delivered gas prices are currently approaching market-clearing levels, and in some cases may have already exceeded it, current projections and analyses do not indicate that there would be a sudden price increase when partial decontrol of gas is scheduled under the NGPA to take place in 1985. However, just what will actually happen to gas prices in 1985 will be largely determined by the price of competing fuels which effectively limit the upward price of gas. As the United States and the world have seen over the last decade, both the price and supply of oil are less than certain, given the fragile nature of the world oil market.

Deregulation of old gas will eliminate a substantial cause of the distortions in the gas market. The benefit of old gas is not going to the gas consumer, but instead to certain gas producers through cross subsidies which result in above market prices for certain categories of natural gas. The old gas price cushion enables pipelines to pay higher than market clearing for new and decontrolled gas supplies. The net result is a subsidy paid to certain producers and gas importers by old gas producers, all at the expense of consumers. Old gas decontrol will stop this from happening and at the same time will encourage the enhanced production of known gas reserves which are the lowest cost reserves to produce.

Without change to existing law many pipelines and distribution companies face financial difficulties that may ultimately result in their insolvency. In many cases they are required to pay for gas they cannot sell, but are still bound by their contract to purchase it. High gas prices have also resulted in major market losses, particularly in the industrial sector, and if this is allowed to continue, residential gas prices can only increase as they will have to include fixed costs previously borne by the industrial sector.

As noted by FERC Chairman C. M. Butler, neither existing law nor producer-pipeline contracts contain the necessary corrective; nor does the FERC have the power to solve the problem administratively. The resolution clearly rests with Congress.

Overall, it is evident that existing law is not operating in the gas consumer's interest nor in the Nation's interest. In his February 26 radio address to the Nation, the President noted that:

> The key to cheaper, more abundant energy for all Americans is a policy that combines consumer protection, incentives to produce, and efficient economic use of our resources.

In conclusion, the American natural gas consumer is being poorly and unfairly served by the existing regulatory system—a system which prevents natural gas producers and their customers from establishing contracts that respond to market forces, including downward pressure on prices that otherwise would result from plentiful gas supplies and declining oil prices. There is widespread agreement that something must be done to relieve the regulatory straight jacket in which the natural gas market now operates.

The key to cheaper, more abundant natural gas supplies at lower prices for all American natural gas consumers—residential, commercial, and industrial—is a policy that combines consumer protection, incentives to produce, and efficient economic use of our resources.

V. Legislative History

97th Congress

During the first session (1981) of the 97th Congress, the Committee on Energy and Natural Resources held hearings on implementation of the wellhead pricing provisions of the NGPA. Further hearings were held during the Second Session (1982) on natural gas policy and regulatory issues. The Committee held another hearing on the current conditions in the natural gas market and the factors contributing to these conditions on December 13, 1982. There hearings considered related legislative proposals pending before the Committee including S. 2074, S. 2892, S. 3028, S. 3054, S. 3069, S. 3070, S. 3076, and S. 3088.

During the second session of the 97th Congress in December 1982, the Senate considered two proposals intended to provide price relief. However, the Senate considered and tabled the two proposals. As an interim measure, the Senate approved by a vote of 90 to 3 Senate Resolution 515 (Mr. McClure, for himself, Mr. Exon, Mr. Johnston, Mr. Warner, Mr. Dole, and Mr. Robert C. Byrd) to provide natural gas consumers with immediate and long-term relief from rapidly increasing natural gas prices, by calling for a series of actions by both the Federal government, natural gas producers, and gas pipelines to take action to reduce or restrain price increases. The text of the resolution is as follows:

Senate Resolution 515

> Relating to the need to provide our Nation's natural gas consumers with immediate and long-term relief from rapidly increasing natural gas prices, by taking a number of actions to reduce or restrain such price increases, and by

providing financial assistance to low-income consumers of natural gas.

Whereas, residential and commercial consumers of natural gas in some parts of the country are facing rapidly increasing gas prices;

Whereas, natural gas prices have increased to the extent that many consumers are unable to pay their monthly gas bills;

Whereas, natural gas prices are increasing at a time of reduced demand and ample short-term supplies of deliverable gas; and

Whereas, average natural gas prices are not adequately responding to these changed market conditions and are imposing financial hardships on this Nation's natural gas consumers;

Now, therefore be it

Resolved, that it is the sense of the Senate that the Federal Energy Regulatory Commission should utilize its statutory authority to proceed immediately to review those administrative actions, in view of the current escalation of natural gas prices, that could result in the modification of certain standard provisions in pipeline-producer gas purchase contracts, such as take-or-pay, indefinite price escalator, and most-favored-nation clauses.

Be it further resolved, that it is the sense of the Senate that natural gas pipeline companies and natural gas producing companies should jointly and immediately initiate efforts to renegotiate immediately the provisions of their gas purchase contracts relating to volumes and prices of gas, particularly, take-or-pay, indefinite price escalator, and most-favored-nation clauses, in order to conform such provisons to changing conditions in the natural gas market and thereby reduce the rapid escalation of natural gas prices; and

Be it further resolved, that it is the sense of the Senate that available appropriations for direct financial assistance should immediately be provided on an expedited basis, to low-income consumers of natural gas pursuant to the low-income energy assistance program established by Title XXVI of the Low-Income Home Energy Assistance Act of 1981.

Subsequently, during the post-election session the Senate also approved an amendment to the Continuing Resolution for Fiscal Year 1983 providing up to $200 million additional for the Federal Low-Income Energy Assistance Program.

98TH CONGRESS

On February 28, 1983, Chairman James A. McClure, at the request of the Administration, introduced S. 615, the Natural Gas Consumer Regulatory Reform Amendments of 1983, a bill to correct deficiencies in the Natural Gas Policy Act of 1978, to protect natural gas consumers from price increases because of current dis-

tortions in the regulated market for natural gas, to provide for a free market for natural gas, and for other purposes.

Six related measures were introduced between January 26 and March 3, 1983, and were considered by the Committee: S. 60 (Mrs. Kassebaum and Mr. Andrews), a bill to amend the Natural Gas Policy Act of 1978, and for other purposes; S. 239 (Mr. Jepsen and Mr. Grassley), a bill to clarify the definition of abuse in the Natural Gas Policy Act of 1978; S. 291 (Mr. Danforth, Mr. Eagleton, and Mr. Sarbanes), a bill to amend the Natural Gas Policy Act of 1978 to prohibit take-or-pay clauses, and for other purposes; S. 293 (Mr. Eagleton, Mr. Danforth, and Mr. Sarbanes), a bill to amend the Natural Gas Policy Act of 1978 to prohibit increases in the wellhead prices of natural gas, and for other purposes; S. 370 (Mr. Percy and Mr. Dixon), a bill entitled the "Imported Liquefied Natural Gas Policy Act of 1983"; and S. 689 (Mr. Heinz, Mr. Tsongas, and Mr. D'Amato), a bill entitled the "Natural Gas Policy Act Amendments of 1983".

Hearings on the above listed bills were held in Washington, D.C., on March 9, 10, 11, 12, 22; in Tulsa, Oklahoma on March 28, 1983; in Oklahoma City, Oklahoma on March 29, 1983; and in Washington, D.C. on April 6, 1983.

During these eight days of hearings the Committee received oral testimony from 84 witnesses representing all perspectives on the natural gas issue. Testimony was received from all components of the gas industry, as well as industrial, commercial and residential consumers of natural gas representatives of State regulatory authorities, and companies that sell competing fuels. Numerous statements also were filed for the record. The 84 witnesses were:

MARCH 9, 1983

The Honorable Donald Paul Hodel, Secretary, Department of Energy.

MARCH 10, 1983

The Honorable John Danforth, U.S. Senator.
The Honorable Nancy Kassebaum, U.S. Senator.
The Honorable Thomas Eagleton, U.S. Senator.
The Honorable Richard Berkley, Mayor, Kansas City, Missouri, U.S. Conference of Mayors.
Mr. Howard Marlowe, AFL/CIO.
Mr. Robert M. Brandon, Citizen/Labor Energy Coalition.
Dr. Mark Cooper, Consumer Energy Council of America.
Mr. David I. Greenberg, Consumer Federal of America.
Mr. James D. Beatty, Chemical Manufacturers Association.
Mr. Richard J. Bryan, Council of Industrial Boiler Owners.
Mr. Patrick McNamara, Petrochemical Energy Group.
Mr. Jack Elam, Process Gas Consumers.
Mr. Wayne Harmon, Louisiana Association of Independent Producers.
Mr. James V. Walzel, Houston Pipeline.
Mr. J. L. Terrill, Louisiana Intrastate Gas Corporation.
Mr. Bill Greehey, Valero Energy Corporation.
Mr. Vernon T. Jones, The Williams Companies.

MARCH 11, 1983

The Honorable Charles Percy, U.S. Senator.
The Honorable Arlen Specter, U.S. Senator.
The Honorable Robert D. Orr, Governor, State of Indiana, National Governors Association.
Mr. Nick Bush, Natural Gas Supply Association.
Mr. Kye Trout, Jr., Independent Petroleum Association of America.
Mr. Perry O. Barber, Jr., Domestic Petroleum Council.
Mr. Gary Dage, Independent Gas Producers Committee.
Mr. Britann Wallace, Independent Petroleum Association of Mountain States.
Mr. Rex Fuller, Texas Independent Producers and Royalty Owners.
Mr. John McMillian, Northwest Energy Company.
Mr. David W. Wilson, Coalition for Equal Access.
Mr. George H. Lawrence, American Gas Association.
Mr. Charles Zeigler, Associated Gas Distributors.
Mr. C. W. Cooper, United Distribution Companies.
Mr. Walter Rodemann, City of Albany, Georgia.
Mr. Jerome McGrath, Interstate Natural Gas Association of America.

MARCH 12, 1983

The Honorable C. M. Butler, Chairman, Federal Energy Regulatory Commission.
The Honorable Laura L. Merrell, National Association of Regulatory Utility Commissioners.
Mr. Brian Lederer, National Association of State Utility Consumer Advocates.
Mr. Frank Simoneaux, Louisiana Department of Natural Resources.
Mr. Leonard S. Coleman, New Jersey Department of Energy.
The Honorable Philip R. O'Connor, Illinois Commerce Commission.
Mr. John H. Croom, Columbia Gas System.
Mr. Wayne Johnson, Entex.
Mr. O. C. Davis, Midcon Corporation.
Mr. John Abram, Southern California Gas Company.
Mr. Stuart Mut, Atlantic Richfield Company.
Mr. C. Robert Palmer, International Association of Drilling Contractors.
Mr. Dwight Moorhead, Petro-Lewis Corporation.
Mr. William Murray, Independent Gas Consultant.
Mr. Russell Thompson, Operational Economics, Inc.
Mr. James S. Rubin, National Association of Manufacturers.
Mr. Chris Weber, National Oil Jobbers Council.
Mr. John Buckley, Northeast Coalition for Energy Equity.
Mr. George Rosenthal, Independent Bakers Association.
Mr. Donald Fonville, Richmond United Neighborhoods.

MARCH 22, 1983

The Honorable Paul Biderman, New Mexico Department of Energy and Minerals.

Mr. George Yates, New Mexico Independent Petroleum Association.
Mr. Michael Lambert, Gas Company of New Mexico.
Mr. A. M. Derrrick, El Paso Natural Gas Company.
Mr. William L. Fisher, University of Texas.
Mr. G. Henry M. Schuler, Georgetown University Center for Strategic and International Studies.

MARCH 28, 1983 (TULSA, OKLAHOMA)

Mr. P. Thomas Cantreel, Deputy Assistant Secretary, Department of Energy.
Mr. Robert S. Boswell, Adams Energy Company.
Mr. Kent J. Harrell, Harrell Energy Company.
Mr. Whitney Marvin, Witmare Exploration Company.
Mr. George Haney, Oklahoma Fertilizer Manufacturers Association.
Mr. Charles F. Hughes, Oklahoma Natural Gas Company.
Mr. Charles J. Waidelich, Cities Service Company.
Mr. J. Bryan Witworth, Phillips Petroleum Company.
Mr. Charles Cleveland, Coalition for Fair Utility Rates.

MARCH 29, 1983 (OKLAHOMA CITY, OKLAHOMA)

Mr. P. Thomas Cantrell, Deputy Assistant Secretary, Department of Energy.
Mr. Clyde Madden.
Mr. Tom Lucas, The National Association of Royalty Owners, Inc.
Mr. Frank W. Lewis, Frank W. Lewis and Associates.
Mr. Bonita Hoeme, Texas County Irrigation and Water Resources Association.
Mr. Blake Arnold, Arnold Petroleum, Inc.
Mr. Dorsey Buttram, Buttram Energies, Inc.
Mr. Douglas R. Cummings, Cummings Oil Company.
Mr. Ray H. Potts, Oklahoma Independent Petroleum Association.
Mr. David O. Cordell, Mustang Fuel Corporation.
Mr. Eugene M. Knight, Midwest Exploration, Inc.
Mr. Bill McDowell, Hadson Petroleum Corporation.
Mr. Gene Lamb, Continental Oil Company.
Ms. Vella Hill.
Mr. Lester Goldsbourough.
Mr. Gene Hooker.

APRIL 6, 1983

The Honorable Donald Paul Hodel, Secretary, Department of Energy.
The Honorable C. M. Butler, Chairman, Federal Energy Regulatory Commission.

During the 8 days of hearings there was virtually unanimous agreement among all the wintesses that the NGPA is not operating as originally intended; that it is not operating in the consumer's best interest; and that it is not operating in the Nation's best interest.

Subsequent to the hearings, seven additional natural gas measures were introduced: S. 740 (Mr. Sasser), a bill to amend the Natural Gas Policy Act of 1978 to require contracts for the first sale of natural gas to include provisions which recognize changing market conditions, and for other purposes; S. 823 (Mr. Jepsen), a bill to amend the Natural Gas Policy Act of 1978 to clarify the definition of abuse, to restrain natural gas price increases by facilitating price responsiveness during periods when supplies exceed demand, to enhance competitive options for local distribution companies in purchasing the least expensive natural gas available, to repeal the incremental pricing of natural gas, and for other purposes; S. 996 (Mrs. Kassebaum, Mr. Danforth, Mr. Eagleton, Mr. Levin, Mr. Andrews, Mr. Metzenbaum, Mr. D'Amato, Mr. Sasser, Mr. Riegle, Mr. Cranston, Mr. Proxmire, Mr. Sarbanes, Mr. Biden, Mr. Tsongas, and Mr. Moynihan), a bill to amend the Natural Gas Policy Act of 1978 to limit natural gas prices and to improve natural gas pricing and marketing practices, and for other purposes; S. 1017 (Mr. Bradley), a bill entitled the "Natural Gas Competition Act of 1983"; S. 1049 (Mr. Hart), a bill to provide relief from natural gas price increases caused by certain contract provisions that are incompatible with current market conditions; S. 1119 (Mr. Dixon and Mr. Percy), a bill to amend the Natural Gas Policy Act of 1978 to establish natural gas pipelines as common carriers, and for other purposes; and S. 1408 (Mr. Melcher), a bill to cover deficiencies in the Natural Gas Policy Act of 1978, to protect natural gas consumers from price increases because of current distortions in the regulated market for natural gas, to provide for a free market for natural gas, to permit natural gas contracts to reflect the change from a regulated to a free market, to eliminate incremental pricing requirements for natural gas, to eliminate certain fuel use restrictions, and for other purposes.

VI. Committee Recommendation and Tabulation of Votes

The Committee on Energy and Natural Resources met in open business session to consider pending natural gas legislation on the following days: April 19, 20, 21, 26, 27, and 28; May 4, 5, 10, 11, 18, 24, and 25; June 8, 9, 14, 15, 16, 21, 22, 23, 28, and 29; and July 13, 14, 19, 20, 21 and 26, 1983. On July 26, 1983, in open business session Senator J. Bennett Johnston moved to report the Natural gas Policy Act Amendments of 1983 without recommendation. The motion was adopted by a vote of 11 yeas and 9 nays of a quorum present.

During the consideration of the measures by the Committee, voice and rollcall votes were taken on proposals for inclusion in the recommendation of the Committee. These votes were taken in open business session, have been announced publicly by the Committee, and are included in the minutes of each session in accordance with the requirements of section 133(b) of the Legislative Reorganization Act of 1946, as amended.

The rollcall vote on reporting the measure was 11 yeas and 9 nays as follows:

YEAS	NAYS
Mr. McClure	Mr. Domenici [1]
Mr. Hatfield [1]	Mr. Chafee
Mr. Weicker [1]	Mr. Heinz
Mr. Wallop	Mr. Jackson
Mr. Warner	Mr. Bumpers
Mr. Murkowski	Mr. Metzenbaum [1]
Mr. Nickles	Mr. Melcher
Mr. Hecht	Mr. Tsongas
Mr. Johnston	Mr. Bradley
Mr. Ford	
Mr. Matsunaga [1]	

[1]Indicates vote by proxy.

VII. Committee Amendment

In addition to the Natural Gas Policy Act Amendments of 1983, the Committee adopted an amendment regarding natural gas imports to be offered as a Committee amendment on the Senate floor, if negotiations currently underway between private parties, and DOE and FERC officials do not succeed in lowering natural gas import prices sufficiently by the time the bill is considered by the Senate. The Committee recognizes the sensitivity of the issue. By waiting until the Senate takes up the bill on the Senate floor to consider the import issue, the Committee hopes that the governments and private parties involved will be able to obviate the need for natural gas import legislation.

Currently section 3 of the Natural Gas Act required that proposed exports and imports of natural gas be approved unless it is found that, ". . . the proposed exportation or importation will not be consistent with the public interest". The authority to approve imports is vested in the Secretary of Energy by the Department of Energy Organization Act. In turn, the authority to approve imports was delegated by the Secretary to the Administrator of the Economic Regulatory Administration. The FERC also authorizes construction of the import facilities under section 7 of the Natural Gas Act as a separate matter.

The amendment would amend section 3 of the Natural Gas Act to provide specific criteria for the Secretary of Energy to use in determining whether a proposed natural gas import is consistent with the public interest. Prices paid for imports could not exceed prices paid for domestic production. Transportation charges would be an add on. Specifically, the amendment provides that in making his determination, the Secretary, in consultation with the Secretary of State, would have to find—

(a) that the wellhead price does not exceed the free market price indicator; and

(b) that the rate charged for transporting natural gas from the wellhead to the border is a cost-or-service rate, which allows the pipeline to collect its justifiable operating costs, depreciation expenses, taxes, and a reasonable return on its investment. Prices under contracts in effect on the date of enactment in excess of the free market price indicator will be phased down over 12 months, as in section 131.

The amendment would also apply the take-or-pay adjustment mechanism (Sec. 316) to imported gas.

The text of the amendment is as follows:

"NATURAL GAS IMPORTS

"SEC. XXX. (a) The Natural Gas Act is amended as follows:

"(1) By redesignating section 3 as subsection 3(a);

"(2) By striking 'Commission' wherever it appears in redesignated subsection 3(a) and inserting 'Secretary of Energy'; and

"(3) By inserting the following new subsections:

" '(b) Beginning on the first day of the second full month after the date of enactment of this subsection, the Secretary may not issue an order approving any application to import natural gas as being consistent with the public interest, unless he finds that—

" '(1) the wellhead price paid for such natural gas does not exceed the applicable price indicator in effect under section 131 of the Natural Gas Policy Act of 1978; and

" '(2) the rate charged for transporting the natural gas from the wellhead to the border of the United States is a cost of service rate, which allows the pipeline or other transporter to collect its justifiable operating costs, depreciation expenses, taxes, and a reasonable return on its investment.

" '(c) Beginning on the first day of the second full month after the date of enactment of this subsection, the Secretary shall compute the wellhead price of any natural gas import approved prior to the date of enactment of this subsection.

" '(1) If he determines that the wellhead price paid for such natural gas exceeds the applicable price indicator in effect under section 131, he shall require the price paid for such natural gas to be reduced to a price not to exceed the free market price indicator price by the first day of the fourteenth full month after enactment.

" '(2) Such reduction shall be consistent with the requirements of section 131(b) of the Natural Gas Policy Act.

" '(d) The determinations of the Secretary required by subsections (b) and (c) shall be made after consultation with the Secretary of State.'.

"(b) Section 316(a) of the Natural Gas Policy Act of 1978 is amended by inserting 'or any import authorization under section (3) of the Natural Gas Act' following the word 'section' ".

VIII. SECTION-BY-SECTION ANALYSIS

SHORT TITLE

Section 1 provides that the short title is the "Natural Gas Policy Act Amendments of 1983".

TITLE I—TRANSITIONAL PRICE AND CONTRACT PROVISIONS

SEC. 101. LIMITATION ON PRICES FOR CERTAIN NATURAL GAS

Section 131 of the NGPA

Section 101 would amend Title I of the Natural Gas Policy Act of 1978 (NGPA) by adding a new subtitle C, entitled "Transitional Price Provisions." This subtitle would contain a new NGPA section

131, entitled "Limitation on Prices for Certain Natural Gas." Section 131 would permit natural gas sellers and purchasers to elect to apply a price adjustment mechanism to certain contracts for the first sale for resale of natural gas.

The price adjustment mechanism would operate to adjust prices for natural gas subject to the section to a price equal to the applicable price indicator. In general, if a contract provides for a sale price that is equal to or above the applicable price indicator, the contract price would be gradually adjusted downward on a monthly basis over a twelve-month period to equal the free market price indicator at the end of that period. For contracts containing prices below the applicable price indicator, the contract price would be adjusted upward in monthly increments over a 36-month period to equal the free market price indicator at the end of that period. Thereafter, the price would remain at the free market price indicator price for an additional six-month period.

Subsection 131(a) would establish the general rules for determining whether the price adjustment mechanism would apply to particular natural gas sales. This subsection also would establish the procedure for electing to use the price adjustment mechanism, and it would prescribe the options available to the non-electing party, in the even that the other party elects to apply the mechanism.

The price adjustment mechanism would apply to contracts for the first sale for resale of natural gas, and it would apply to a particular contract only if one of the parties to the contract elects to have it apply. The terms "seller" and "purchaser" mean the parties to the first sale for resale. Moreover, the mechanism would apply only to natural gas produced in the contiguous 48 States, including gas produced from leases on those portions of the Outer Continental Shelf that are adjacent to the lower 48 States.

The price adjustment mechanism would not apply to natural gas deregulated pursuant to section 201 of the bill (new NGPA subsections 121(f)). In additon, the price adjustment mechanism would not apply to contracts that were in effect on the date of enactment and contain a clause enabling the purchaser, at his option, to adjust the contract price to a level equal to the applicable price indicator. However, this exemption would not apply if the clause were not available for exercise by the purchaser at the beginning of the price adjustment period, or if the seller notifies the purchaser that the clause does not meet the applicable criteria.

An election to apply the price adjustment mechanism to a particular contract would be required to be made no later than the first day of the fifth full month after enactment of the bill. Thus, the parties to a contract would have up to four months to analyze the projected results of the election and to decide whether to make the election. The four-month period also would provide the parties with an adequate opportunity to attempt to renegotiate the contract, if either party chose to initiate negotiations. If neither party elects to be covered, the contract would remain subject to any applicable provisions of the NGPA.

The price adjustment mechanism would begin to operate on the first day of the second full calendar month following the date of enactment. Thus, an election to apply the price adjustment mechanism could occur prior to the date the mechanism begins to oper-

ate, or it would occur at any time during the subsequent three-month period ending on the first day of the fifth full month after enactment, when the election period terminates.

If a party elects to apply the price adjustment mechanism, NGPA section 131(a) would provide the other party with two basic options: to agree to the election or to terminate the contact. Where a seller elects to alter a contact containing prices below the appliable price indicator, and the purchaser agrees to the election, the purchaser would have the additional option of terminating the contract at the end of the first 18 months of the 36-month price adjustment period. In the alternative, if the purchaser should decide to terminate the contract, the purchaser would have the additional option of compelling the seller to continue deliveries at the computed price and in accordance with the non-price terms of the contract, until the seller has entered into a contract with a new, unaffiliated purchaser. If the seller does not obtain a new purchaser within the first 18 months of the 36-month price adjustment period, the purchaser would be permitted to elect not to compel further deliveries.

Where a purchaser elects to apply the price adjustment mechanism to a contract containing a price equal to or above the applicable price indicator, the seller would have the options of agreeing to the election or terminating the contract. If the seller chooses to terminate the contract, the seller would be required to continue deliveries at the computed price and in accordance with the non-price terms of the contract. Deliveries would continue for a one-year period or until the seller enters into a contract with a new, unaffiliated purchaser, whichever occurs first.

In the event that a party to a contract elects to apply the price adjustment mechanism to natural gas subject to NGPA sections 121 (a), (b), and (c), and if the contract expires prior to the end of the period specified in subsection (d), subsection (a) would require both parties to continue performance under the contract at the computed price until the expiration of the price adjustment period. Thereafter, the price for deliveries under the contract would be a price equal to the free market price indicator until expiration of the period under subsection (d). As noted above, this requirement would not apply to contracts for the sale of gas which have been, or would be, deregulated under the NGPA. This exemption reflects the Committee's intent to permit those contracts to expire on their expiration date, as anticipated by the parties. Moreover, without the exemption, the provision would impose an extension of price controls on a portion of the contracts at a time when they would have been decontrolled under NGPA section 121.

Upon expiration of the six-month price limitation period, the termination of the expired contract would be effective, and the sale of the gas would not be subject to the right-of-first-refusal or right-of-first offer provisions of new NGPA section 318. However, in all other instances involving the sale of gas subject to a contract terminated pursuant to the provisions of subsection 131(a), the right-of-first-refusal or right-of-first-offer provisions would apply.

Subsection 131(b) would establish the price adjustment mechanism applicable to "high priced" gas, which is gas sold at a price equal to or exceeding the temporary price indicator (defined in sub-

section (f) as the price of section 103 gas) on the first day of the second full calendar month following the date of enactment. On that date, the price adjustment mechanism would begin to operate, but only with respect to those contracts that had been subjected to the mechanism by the election of one of the parties. During the subsequent twelve months, the price for the sale of such gas would be the computed price, adjusted downward in twelve monthly increments, so that the price would equal the free market price indicator (defined in subsection (f)) at the end of the twelve-month period. Elections occurring after the start-up date of the ramp-down mechanism would produce a price adjustment period of less than twelve months. Regardless of the date of the election, prices in contracts subjected to the ramp-down mechanism would reach the free market price indicator at the end of the twelve-month period.

Subsection 131(c) would establish a comparable price adjustment mechanism applicable to "low priced" gas. The mechanism would gradually adjust the price upward, and the adjustment period would be 36 months. "Low priced" gas would be defined as gas sold pursuant to a contract for the first sale for resale where the applicable price indicator exceeds the sale price on the first day of the second full month following the date of enactment. On that date, the price adjustment mechanism would begin to operate, and it would continue for 36 months. At the end of the period, the sale price would equal the free market price indicator.

Subsections 131 (b) and (c), together with the definitions in subsection 131(e), provide the formula for the computation of the price "ramp" for a particular contract. Generally, this formula provides for a smooth adjustment in contract prices so as to reach the free market price indicator (FMPI) at the end of the applicable price control period (12 months in the case of high-cost gas and 36 months in the case of low-cost gas). In fact, in the event that the FMPI is constant over the entire price control period, the formula reduces to a straight line connecting the contract price at the commencement of the period with the FMPI at the end of it in monthly increments of change.

The computation of the price ramp for a particular contract depends only on the value of the price under the contract in the month before the first month of the price control period, the length of the price control period and the value of the applicable price indicator in each month of that period. The applicable price indicator is the section 103 price for the first six months of operation of the ramp and the FMPI thereafter. The price computed under the formula in any month is called the "computed price" in the statute, and is obtained by adjusting the computed price for the previous month by the difference between the FMPI and that price divided by the number of months remaining in the price control period. Thus, at each point, the formula is attempting to adjust the computed price in the direction of the FMPI in equal monthly increments. For example:

> Assume that high-cost gas under a contract is selling for $5.00 per million Btu's in the first full month after the enactment of the Act. The price ramp will begin in the second full month after enactment. Assume the section 103 price for this

second month after enactment is $2.85 per million Btu's. The section 103 price is the applicable price indicator for this month. The computed price for this month—the first month of the 12-month price control period for high-cost gas—would be $4.82 per million Btu's. This is obtained by reducing the $5.00 price by ($5.00-$2.85)/12-$0.18.

If the section 103 price for the next month (the third after enactment and the second of the price control period) is $2.86 per million Btu's, then computed price for that month would be $4.64. This price is obtained by reducing the previous month's price ($4.82) by ($4.82-$2.86)/11-$0.18.

For the next month, the computed price would be the $4.64 less the difference between $4.64 and the next month's section 103 price divided by 10. The following month the difference would be divided by 9. In the last month of the 12-month price control period the difference between the eleventh month's computed price, and the FMPI would be divided by one, so that the adjustment would, by definition, yield a computed price exactly equal to the FMPI.

In the case of low-cost gas the method of calculation is just the same, except that the adjustment operates to increase the computed price each successive month, and the price control period is 36 months long instead of 12 months long.

For contracts containing two or more categories of gas, subsection (j) would require that for the purpose of applying the price adjustment mechanism, each contract would be split and would be treated as two separate contracts if at least one category consists of high-priced gas covered by subsection 131(b), and if at least one other category consists of low-priced gas covered by subsection 131(c). In that event, one of the two contracts would include the high-priced gas and would be subjected to the ramp-down mechanism. The other contract would include the low-priced gas and would be subjected to the ramp-up mechanism. If a contract contains two or more categories of gas, but all of the categories consist only of high-priced gas, or low-priced gas, then the contract would be treated as a single contract for the purpose of applying the price adjustment mechanism. The contract would not be divided into separate contracts for each category.

Subsection 131(d) would impose an additional price limitation period for contracts that had been subjected to either the "ramp-up" or "ramp-down" adjustment mechanism. In either case, at the end of the adjustment period the free market price indicator would be an upward limit on the contract price for an additional six-month period.

Subsection 131(e) would establish the definitions necessary for calculating the monthly price adjustments that would occur during price adjustment periods.

Subsection 131(f) defines the "applicable price indicator" to be used in calculating monthly price adjustments pursuant to this section. Initially, a temporary price indicator goes into effect. It is the price of NGPA section 103 gas, as adjusted each month. It would go into effect the first day of the second full month after enactment, and it would apply for the next six months. Thereafter, beginning on the first day of the eighth full month after enactment, the appli-

cable price indicator for any particular month would be the free market indicator, defined as the volume weighted average price of two types of gas: (1) deregulated gas sold under contracts exempt from ceiling prices pursuant to section 121(f)(1) and entered into during the six-months prior to the month in which the calculation is made; and (2) gas sold under contracts for imports authorized during the six months prior to the month in which the calculation is made. The free market price indicator would be calculated monthly.

Section 131 would also require the Federal Energy Regulatory Commission to compute and publish the free market price indicator, and to issue rules implementing the provisions of the section. Purchasers of natural gas who execute new contracts subject to NGPA section 121(f) would be required to provide the Commission with date concerning prices and volumes, to enable the commission to compute the free market price indicator. Publication of the free market price indicator would continue for 44 months after enactment of the bill. The price established by the FMPI for the forty-fourth month would remain effective indefinitely beyond that month for calculation of the effect of certain contract provisions. The requirement for filing contracts, and computing the free market price indicator, would cease at that time.

SEC. 102. REPEAL OF CERTAIN CONTRACT REQUIREMENTS AND IMPOSITION OF TAKE-OR-PAY LIMITS

Imposition of take-or-pay limits (Sec. 316 of the NGPA)

Section 102 of the bill would repeal NGPA subsections 315 (a) and (b); would redesignate subsection 315(c) as section 315; and would add a new section 316 entitled "Imposition of Take-or-Pay Limits." In general, the new section would give natural gas purchasers the right to refuse to receive deliveries of, or pay for, certain volumes of natural gas at specified percentages of deliverability.

Currently, subsection 315(a) authorizes the Commission to specify the minimum duration of certain contracts exempted from the provisions of the Natural Gas Act and the jurisdiction of the Commission under that Act. Subsection 315(b) imposes on sellers a statutory obligation to offer to sell natural gas to certain purchasers under specified conditions, and it grants to certain purchasers a right of first refusal to be exercised under limited circumstances. Both are repealed.

Old subsection 315(c) would become section 315. It authorizes the Commission to require purchasers to file contracts for the first sale of natural gas. The retention of this subsection is consistent with the filing requirement contained in the NGPA section 131(h).

Section 102 of the bill also would add a new NGPA section 316. The new section would provide purchasers with a right to refuse to take delivery of, or pay for, certain volumes of gas for specified periods of time, if such volumes are included in a first sale contract in effect on the date of enactment of the bill, and are not exempted from wellhead price controls pursuant to subsection 121(f). During the first twelve-month period immediately following the date of enactment, the purchaser could exercise the right provided and thus

would not be obligated to take delivery of, or pay for, any volume in excess of 50 percent of deliverability. For the second twelve-month period after the date of enactment, the volume would be 60 percent, and for the third twelve-month period it would be 70 percent. For example, a purchaser waits until the first day of the seventh month after the date of enactment to utilize the provision to reduce volumes taken, the reduction at that level could be maintained for only six months, through the end of the first twelve-month period following the date of enactment. On that date, the 50 percent reduction would no longer be available under the section. Deliveries could be reduced to 60 percent and would continue for the remaining six months of the one-year period permitted for any particular reduction.

The election to reduce deliveries under this section would be discretionary; it would be exercised to reduce the take or pay obligation to any volume between 100 percent and the volume specified in subsection (b).

The right to reduce deliveries pursuant to this section would expire at the end of the 36-month period following the date of enactment. Any particular reduction of deliveries pursuant to this section would be limited to no more than one year; and it could be renewed for additional one-year periods. For example, a reduction down to 50 percent during the first twelve-month period could not be renewed at 50 percent for the second year. The percentage would increase to 60 percent for the renewal period.

If a purchaser elects to reduce deliveries pursuant to the right provided by section 316, the volume not taken due to the right provided by the section would be deemed to be released from the contract pursuant to subsection (e), and the producer would be permitted to sell that volume to any other purchaser. Section 316 would facilitate the sale of released take or pay gas by providing that such gas would not be subject to abandonment proceedings required by the Natural Gas Act, would no longer be committed or dedicated to interstate commerce, and would not be subject to the price adjustment mechanism or any other form of ceiling prices otherwise applicable under the NGPA.

If a purchaser elects to reduce deliveries pursuant to section 316, subsection (f) would require the purchaser to make the seller an offer to transport the volumes not taken. The terms of the transportation service would be in accordance with the provisions of new NPGA section 319. Subsection (h) would exempt casinghead natural gas from the take-or-pay reductions authorized by section 316; subsection (i) would exempt volumes required to be produced in order to prevent drainage. To the extent that any State or Federal law would operate to prevent the reduction in deliveries authorized by section 316, subsection (j) would expressly provide that such law would be pre-empted.

For contracts covering two or more NGPA categories of gas, subsection (k) would require that each category be treated as a separate contract for the purpose of reducing deliveries pursuant to this section.

Subsection (n) delays the effective date of this section until thirty days after the date of enactment. Purchasers wishing to exercise the authority provided by the section are required to give thirty

days notice to the seller. That notice could be given in advance of the effective date of the section.

SEC. 103. MARKET OUT AUTHORITY, RIGHT OF FIRST REFUSAL AND RIGHT OF FIRST OFFER

Section 103 would amend Title III of the NGPA by adding new section 317 and 318. Section 317, entitled "Market Out Provision," would grant to sellers and purchasers the statutory right to terminate certain contracts for the first sale for resale of natural gas. Section 318, entitled "Right of First Refusal and Right of First Offer," would establish a procedure that would enable purchasers, under certain circumstances, to continue purchasing natural gas sold under a contract that had been marketed out pursuant to section 317.

Market out provision (Sec. 317 of the NGPA)

NGPA Sectioin 317 would apply to contracts in effect on the date of enactment of the bill. Such contracts would be limited to those for the first sale for resale of gas produced in the 48 contiguous states, including the adjacent areas of the Outer Continental Shelf. Section 317 would grant to either party to such a contract a limited right to terminate the contract.

Market out authority would not apply to contracts containing a clause enabling the purchaser, at his option, to adjust the price to a level equal to the "applicable price indicator" (as defined in subsection 131(f)). However, this exemption would not apply if the clause were not available for exercise by the purchaser on the first day of the second full month after the date of enactment of the bill (the beginning of the price adjustment period), or if the seller notifies the purchaser that the clause does not meet the applicable criteria.

Subsection 317(b) would provide that contracts covering more than one category of natural gas under the NGPA would be treated as two separate contracts if at least one category is high-priced gas (as defined in section 131(b)) and at least one other category is low-priced gas (as defined in section 131(c)). In that circumstance, for the purpose of applying the market out authority, one contract would include all of the high-priced gas, and the other contract would include all of the low-priced gas. Thus, for a multi-category contract, the NGPA pricing categories would be combined into no more than two contracts for the purposes of applying this section.

Subsection 317(c) would establish the time periods during which the market out authority would be exercised. Termination of a contract through the market out process could not occur prior to the first day of the twentieth full month after enactment of the bill, if the contract pertains to high-priced gas subject to the "ramp-down" provisions of subsection 131(b). In addition, termination of contracts for the sale of low-priced gas (subject to subsection 131(c)) could not occur prior to the first day of the forty-fourth month after enactment.

The exercise of market out authority would be subject to the following additional conditions set forth in subsection 317(d): at least 60 days advance notice must be provided; the contract must not be materially breached during the notice period; and the other party

must be offered an unconditional release from all obligations relating to the contract.

If a party terminates a contract pursuant to this section, subsection (e) would provide the other party with a right to compel the continuation of deliveries for a limited period of time. It would ensure that the exercise of market out authority by one party does not result in the immediate imposition of serious operating problems or financial burdens on the other party. It would also prevent the abrupt disruptions in deliveries to pipelines and the immediate reductions in producers' revenues that otherwise could occur after contracts are terminated pursuant to the market out authority of this section.

If the seller markets out, the purchaser would have the right to compel the seller to continue making deliveries until a new, unaffiliated purchaser is obtained. The deliveries would be made in accordance with the terms of the terminated contract, except that the price would be adjusted each month to equal the free market price indicator (defined in subsection 131(f)(2)). If deliveries continue after the forty-fourth month following enactment of the bill, the contract price would be set at the level of the free market indicator for that month. No further price adjustments would occur, because the free market price indicator would no longer be adjusted on a monthly basis. If the purchaser markets out, the seller would have the right to compel the purchaser to continue taking deliveries at a price equal to the free market price indicator until the seller obtains a new, unaffiliated purchaser, or for a period of one year, whichever first occurs.

Subsection (f) would prohibit both sellers and purchasers from terminating a particular contract pursuant to this section and then selling the gas to an affiliate or, in the case of a seller, using the gas for such seller company's own use during any period prior to the date on which the contract would have expired under its own terms.

Subsection (g) would impose an enhanced recovery requirement on any seller who utilizes the authority of this section to terminate a contract for the sale of gas classified as section 104 gas under the NGPA. If the gas is subsequently sold to a new purchaser, the new contract must contain an express provision committing the seller to use "reasonable good faith efforts, where technically and financially feasible," to enhance the recovery of the remaining volumes of gas. The enhanced recovery requirement would apply only to section 104 gas sold under a new contract after the original contract had been terminated by the seller.

The enhanced recovery requirement would encourage additional production of section 104 gas, because such gas could be produced in an economically efficient manner, taking into account original exploration and development costs as well as current production costs. Additional volumes of section 104 gas could be produced from existing wells that are permitted to continue operating at lower pressures, from re-worked wells, and from new wells drilled at spaced intervals in existing producing fields.

Right of first refusal and right of first offer (Sec. 318 of the NGPA)

Section 318 would provide two mutually exclusive mechanisms by which any purchaser, previously a party to a contract terminated pursuant to the market out or price adjustment provisions of the bill, would have an opportunity to retain access to the volumes of gas subject to the terminated contract. With the right of first refusal, the original purchaser has the right to match the terms and conditions of any proposed sale of the volumes subject to the terminated contract. If the original purchaser made such an offer, the seller would be prohibited from selling those volumes to another purchaser. The right of first offer, on the other hand, would provide a purchaser with the right to initiate the bidding process by offering to purchase the gas at a specified price. Once the offer has been made, the seller may sell the gas to another purchaser, but only at a price higher than the offered price.

Section 318(a) would apply to any contract terminated by a seller pursuant to the market out authority of section 317, or terminated by a purchaser under section 131(a)(3)(A) after the seller elects to apply the price adjustment mechanism pursuant to subsection 131(c). The purchaser making a purchase under the terminated contract would be granted a right of first refusal of any subsequent offer by the seller to sell the gas. However, the exercise of the right of first refusal would be conditioned on the purchaser having made an offer to purchase the gas at a price equal to or greater than the applicable market price indicator. If such an offer is made by the purchaser, and if the seller subsequently proposes to sell the gas to another purchaser, the original purchaser would have the right to match the terms of the proposed sale and enter into a new contract with the seller, thereby retaining the gas and the associated reserves.

Section 318(b) would grant to purchasers a right of first offer, which could be exercised in two circumstances: if a contract had been terminated by that purchaser under the market out authority of section 317, or if a contract for natural gas subject to section 121 (a), (b), or (c), or section 107(c)(5) had been terminated by a seller under section 131(a)(3)(B) after the purchaser had elected to apply the price adjustment mechanism pursuant to subsection 131(b). The right of first offer would enable a purchaser, who had previously purchased gas under the terminated contract, to offer to purchase the gas. The seller would be required to nominate volumes of gas available for purchase in a subsequent contract. The nomination must apply to volumes of gas coextensive with the terminated contract. The seller would also be required to include terms and conditions in the nomination regarding duration of the contract, and volumes to be delivered under the contract, including terms and conditions respecting delivery and take or pay obligations. When used in this section, the term "volumes of gas coextensive with the terminated contract" means natural gas previously covered by the gas purchase agreement. If, subsequent to the purchaser's offer, the seller wishes to alter the terms of the nomination, the original purchaser would have the right to make another offer to purchase the gas. The seller could reject the offer within 30 days and thereafter sell the gas to another purchaser at a higher price and under the

same terms and conditions. However, if an offer to purchase by the original purchaser has been made pursuant to this subsection, the seller would be prohibited from selling the gas to another purchaser at the same price or a lower price.

SEC. 104. TRANSPORTATION OBLIGATION FOR CERTAIN NATURAL GAS

Section 319 of the NGPA

Section 104 of the bill would amend Title III of the NGPA to add a new section 319 which would provide that in the event a contract is terminated under new sections 131 or 317 of the NGPA, a purchaser, previously a party to the terminated contract, would have an obligation to transport the natural gas (which was subject to the terminated contract) for the seller previously a party to the terminated contract. In addition, this obligation would extend to released take or pay gas, as defined in subsection 316(e). The transportation obligation would not exceed, on an annual basis, the largest volume delivered during any twelve consecutive months in the thirty-six months prior to the termination of the contract.

The Commission, or the State agency of appropriate jurisdiction, would be authorized to order a limitation of the transportation obligation if compliance would (a) require the construction of additional facilities (other than minor facilities) or (b) impair the ability of the pipeline to render adequate service to its existing customers.

The consideration for such transportation would be an incentive allowance of $.05 per million Btu's plus the cost of such transportation; no amount of such incentive allowance would be required to be credited and passthrough to the pipeline's customers.

SEC. 105. EFFECT OF FREE MARKET PRICE INDICATOR

Section 320 of the NGPA

Section 105 of the bill would add a new NGPA section 320 which would provide that the free market price indicator (FMPI) in effect on the first day of the forty-fourth full month after the date of enactment shall operate as a permanent reference price for an area rate clause in any contract, and as the reference price for natural gas sold under a contract subject to the election under new section 131(c) of the NGPA. This provision would ensure that at the end of the "ramp-up" period, the sale price would not be reduced by operation of an area rate pricing provision in the contract that would be triggered by the absence of a Federal reference price.

Section 320 would also provide that for the purpose of an area rate clause, any maximum lawful price under subtitle A of the NGPA, or any price established pursuant to new NGPA section 131, shall be deemed to be a just and reasonable rate established by order of the Commission.

TITLE II—REMOVAL OR WELLHEAD PRICE CONTROLS AND REPEAL OF JURISDICTION OVER CERTAIN FIRST SALES

SEC. 201. REMOVAL OF WELLHEAD PRICE CONTROLS

Section 201 would section 121 of the NGPA by adding new subsections (f) and (g).

Special rule (section 121 (f) and (g) of NGPA)

Section 121(f) would provide that effective on the date of enactment of the bill, the provisions of subtitle A would no longer apply to four additional categories of gas: gas subject to any contract for the first sale of natural gas that was executed after the date of enactment; gas subject to any contract in the first sale of natural gas that was renegotiated after the date of enactment of this subsection, if such renegotiated contract expressly provides that the provisions of subtitle A shall not apply; released take or pay gas under subsection 316 (e) and gas subject to an election under section 131(b) or (c).

Subsection (g) would provide for the removal of wellhead price controls on all natural gas sales that would not be exempted from price controls under subtitles A and C pursuant to other provisions of NGPA section 121. With the exception of the provisions requiring continued deliveries under sections 131 and 317, total decontrol of wellhead prices would occur no later than the first day of the forty-fourth full month after enactment, which is the expiration date of the price adjustment mechanism applicable to low-price gas. As noted above, price controls on certain volumes of low-priced gas could remain in effect beyond the forty-fourth month after enactment under the limited circumstances provided for in sections 131(a)(3)(A)(i) and 317(e). If a seller elects to apply the price adjustment mechanism to a particular contract and the purchaser then excercises the right to terminate the contract, the producer could be compelled to continue deliveries, at controlled prices, until a new contract with a new purchaser has been executed. If the seller fails to enter into a new contract, it is possible that price controls on continued deliveries could extend beyond the forty-fourth month after enactment of the bill. Price controls on high-priced gas would expire at the end of the "ramp down" price adjustment mechanism (the first day of the twentieth full month after enactment of the bill), or at the end of any additional time period specified for the continuation of deliveries pursuant to section 131(a)(3)(B)(i).

SEC. 202. REPEAL OF NATURAL GAS ACT JURISDICTION OVER FIRST SALE OF COMMITTED OR DEDICATED NATURAL GAS (SEC. 202)

Section 601 of the NGPA

Section 202 would amend section 601(a)(1)(B) of the NGPA by adding three additional clauses. Secton 601(a)(1)(B) currently exempts from the provisions of the Natural Gas Act, and from the jurisdiction of the Federal Energy Regulatory Commission under that Act, three categories of natural gas: high-cost gas (section 107(c)); new gas (section 102(c)); and gas produced from and new, onshore production well (section 103(c)), Section 202 of the bill would extend this exemption to three additional categories: gas exempted from price controls under NGPA section 121(f); gas subject to an expired contract or the exercise of market out authority under new NGPA section 317; or gas exempted from wellhead price controls pursuant to new NGPA section 121(g).

SEC. 203. REPEAL OF PROVISIONS ALLOWING REIMPOSITION OF PRICE CONTROL AND REPORT TO CONGRESS

Section 203 of the bill would repeal sections 122, 123, and 507 of the NGPA. Those sections grant standby authority to the President and the Congress to reimpose price controls, in accordance with specified procedures. Reimposed controls could take effect during a two-year period comencing on July 1, 1985, but they could remain in effect for a period of no more than 18 months. In addition, section 123 directs the Department of Energy to submit reports to the President and the Congress on conditions in the natural gas markets.

TITLE III—LIMITATIONS ON PASSTHROUGH OF CERTAIN PURCHASED GAS COSTS

SEC. 301. LIMITATION ON PASSTHROUGH OF CERTAIN PURCHASED GAS COSTS

Section 601 (c) of NGPA

Section 301, would amend section 601 (c) of the NGPA by adding three new paragraphs. Section 601(c) currently provides, in part, that the Federal Energy Regulatory Commission may not prohibit an interstate pipeline from recovering from its customers the ful cost of the gas it has purchased, unless the Commission determines that the pipeline paid an excessive amount for such gas due to fraud, abuse, or similar grounds. In the absence of such a finding, the Commission is required to permit each pipeline to pass through to its customers its purchase gas costs, if such costs are deemed to be just and reasonable under section 601 (b).

Section 301 would add a "prudent purchase" test to the requirements of section 601(c). The test would apply only to gas purchased under contracts for the first sale of natural gas entered into or renegotiated during a three-year period after the date on which the free market price indicator goes into effect. That date would be the first day of the eighth full month after enactment of the bill.

In general, the prudent purchase test would establish new standards to be applied by the Commission in determining whether interstate pipelines would be permitted to pass through to their customers certain increases in purchased gas costs.

New paragraph (3) of section 601(c), would permit the passthrough of purchased gas costs if the amounts paid are "prudent" as defined in subparagraph (A). However, the Commission would have the authority to prohibit a pipeline from recovering purchased gas costs that do not meet the prudency test. Passthrough could not be denied if such purchases are "prudent" as defined in subparagraph (A). Purchases would be deemed to be prudent if they meet one of three criteria: (1) the weighted average amount paid during any month for gas purchased under new and renegotiated contracts does not exceed 110 percent of the free market price indicator in effect during that month; (2) the purchase is the result of a pipeline's exercise of right of first refusal pursuant to section 318(a); or (3) the amount was paid pursuant to a right of first offer under section 318(b).

In the event that the weighted average amount paid by a pipeline for purchased gas to which this section applies exceeds 110 percent of the free market price indicator during any particular month, the Commission would have the authority either to deny recovery of such excess costs, or to allow recovery pursuant to subparagraph (B). The passthrough of such costs to the pipeline's customers would be permitted only if they are found to be just and reasonable under the requirements of section 601(c)(2), and if the Commission finds that they were prudently incurred. In making that determination, the Commission would be required to take into account two criteria: the reasonable availability of lower cost supplies to the pipeline, and the necessity of incurring such costs in order to acquire supplies sufficient to ensure adequate service to the pipeline's existing customers.

Subparagraph (D) would provide that if the Commission determines that certain purchased gas costs meet the prudent purchase test of subparagraph (A) or are found to be prudently incurred under the criteria of subparagraph (B), then such costs would be deemed to be just and reasonable for the purposes of sections (4) and (5) of the Natural Gas Act.

Subparagraph (E) would require the Commission to permit pipelines to begin recovering increased purchased gas costs immediately after filing a rate increase request reflecting such increased costs. The effective dates of such increased rates would not be subject to suspension after the date of filing. If the Commission later determines that a portion of the additional purchased gas costs should not be recovered, the pipeline would be required to refund the disallowed portion to its customers, together with accumulated interest calculated pursuant to the Commission's regulations.

Subparagraph (F) would prohibit an interstate pipeline from passing through to its customers the cost of gas purchased from an affiliated producer pursuant to contracts renegotiated after the date of enactment of the bill, if the terms of such contracts are not commensurate with the terms of contracts renegotiated after that date between the piepline and its non-affiliated producers.

Subparagraph (G) would prevent interstate pipelines from retaining the benefits of reductions in purchased gas costs. It would require the Commission to promulgate a rule providing for automatic passthrough to pipeline customers of all such cost reductions, including those resulting from decreases in take or pay volumes, and reductions in contract prices reflecting application of the price adjustment mechanism.

TITLE IV—REMOVAL OF IMPEDIMENTS TO INTERSTATE MOVEMENTS OF GAS

SEC. 401. CONTRACT CARRIER AUTHORIZATION

Section 321 of the NGPA

Section 401 would amend Title III of the Natural Gas Policy Act of 1978 (NGPA) by adding a new section 321, entitled "Contract Carrier Authorization."

The purpose of this section is to encourage contract carriage of natural gas in order to increase competition for natural gas at the

wellhead and to allow natural gas to move more freely around the natural gas transportation system in response to market forces.

General interstate pipeline rule

NGPA section 321(a) requires an interstate pipeline to transport gas on behalf of another person if: (1) transportation is requested by the seller or purchaser of such gas; (2) the pipeline has available capacity; and (3) the seller or purchaser certifies 45 days in advance that certain conditions have been met; namely, (A) it has notified the pipeline currently serving the person for whom such transportation service is being sought of its intent to request such transportation; (B) it has attempted, in good faith, to negotiate a continuation of current service, if any, by the pipeline; and (C) it has been unable to conclude any other satisfactory agreement for the transportation of such gas. Section 321(a) would not preclude a new seller or purchaser of natural gas who is currently served by an interstate pipeline from applying for contract carriage authorization.

Subsection (b) requires the Federal Energy Regulatory Commission (Commission), after consultation with the Governor of the affected State, to order an intrastate pipeline, as defined this section, to transport natural gas if: (1) transporation by a seller or purchaser of natural gas is requested; (2) the request is received by the intrastate pipeline and filed with the State agency, and the State agency has failed to take final administrative action within a period of 90 days after the receipt of the request; (3) the pipeline has available capacity; and (4) the seller or purchaser certifies that certain conditions have been met. The conditions are that: (A) 45 days in advance it notified the intrastate pipeline currently serving the person from whom such transportation service is being sought of its intent to request such contract carrier authorization; (B) it attempted, in good faith, to negotiate a continuation of current service; and (C) it has been unable to conclude any other satisfactory agreement for the transportation of such gas. This subsection does not apply if a State agency certifies that it has the authority to require an intrastate pipeline having available capacity to transport natural gas for a seller or purchaser of natural gas requesting such transportation, and pursuant to that authority it is required to take final administrative action within a time certain. Section 321(b) would not preclude a new seller or purchaser of natural gas who is not currently served by an intrastate pipeline from applying for contract carriage authorization.

No intrastate pipeline shall be subject to the jurisdiction of the Commission under the Natural Gas Act as a result of transporting natural gas pursuant to this subsection.

The Commission is required to establish an incentive allowance for contract carriage compensation for intrastate pipelines ordered by the Commission to transport gas if no incentive allowance has been established pursuant to State law. The Commission also is required to establish a fair and equitable rate for transportation by an intrastate pipeline if no rate has been established pursuant to State law.

The Committee intends that a State's authority to order transportation of gas by an intrastate pipeline for a purchaser includes

requests for transportation made by direct users as well. The term "purchaser" is broad enough to include direct users of natural gas (including electric utilities), industrial users, distribution companies, or any other individual who could enter into a contract for the purchase or sale of natural gas. A State's authority would have to be non-discriminatory.

General local distribution company rule

Subsection (c) establishes a local distribution company (LDC) rule. It requires the Commission, after consultation with the Governor of the affected State, to order a LDC to transport natural gas if: (1) transportation is requested by a purchaser or seller of natural gas; (2) the request is received by the LDC and filed with the State agency of jurisdiction, and the State agency has failed to take administrative action within 90 days of receipt of the request; (3) the LDC has available capacity; and (4) the seller or purchaser certifies that certain conditions have been met. The conditions are that: (A) it has notified the pipeline or LDC currently serving the person for whom such transportation is being sought at least 45 days in advance that it intends to make a transportation request; (B) it attempted, in good faith, to negotiate a continuation of current service by such pipeline or LDC; and (C) it has been unable to conclude any other satisfactory agreement for the transportion of such gas. This subsection does not apply if a State agency certifies that: (1) it has authority to require the LDC to transport natural gas for a seller or purchaser of natural gas requesting such transportation; and (2) pursuant to such authority it is required to take final administrative action within a time certain. Section 321(c) would not preclude a new seller or purchaser of natural gas who is not currently served by a local distribution company from applying for contract carriage authorization.

Certain companies that are subject to the jurisdiction of the Commission have characteristics more similar to regional distribution companies that cross state lines than to interstate pipelines. In considering applications for contract carriage to be conducted by such companies, the Commission should take those characteristics into consideration, and such companies should be treated accordingly.

No LDC shall be subject to the jurisdiction of the Commission by virtue of transporting natural gas pursuant to the requirements of this subsection. The Commission is required to establish an incentive allowance for contract carriage compensation for a LDC ordered by the Commisison to transport natural gas, if no incentive allowance has been established pursuant to State law. The Commission is also required to establish an equitable rate for transportation of natural gas by a LDC if no such rate has been established pursuant to State law.

No individual facility served as of the date of enactment of this act, or historically served by a local distribution company, may recieve gas transported pursuant to this subsection. An exception is provided where the request is for: (1) transportation service to an individual facility served as of the date of enactment of this act, or historically served by a LDC, to the extent that the volume of natural gas to be transported exceeds the average annual deliveries to

such facility during the four years prior to the date of enactment; (2) where gas is to be transported to serve facilities not in existence as of the date of enactment; (3) where gas is to be transported to serve facilities which: (A) have not used gas for three years prior to date of application for transportation service; or (B) have not used gas for four years, in the case of facilities historically served by a LDC; (4) to the extent that the individual facility has a direct purchase contract with an interstate natural gas pipeline; or (5) to a request for transportation service if such request has the concurrence of the local distribution company and the State agency of jurisdiction.

In addition, the Commission may, by order, approve a request for transportation service if it finds that: (1) a State agency having regulatory jurisdiction over local distribution companies has taken final administrative action on a request for transportation and such action is no longer subject to appeal pursuant to state law, and (2) the final action taken by the State agency did not result in transportation service because such action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. This provison does not provide an appeal from the State agency's decision per se. Instead, the Commission, based upon the specific criteria provided, would detemine if it has the jurisdiction to entertain the application for contract carriage. The question of whether or not the State agency's decision is denying a transportation request, or in terms and conditions imposed, is arbitrary and capricious, does not invest in the Commission the authority to modify the State agency order or to direct the State agency to take any action. Once the Commission makes the detemination that it has the authority to accept the application, it proceeds on that application in the usual manner in accordance with the other provisions of this section.

The Commission's decision would rest upon a determination that the State agency's action has transgressed the statutory boundaries, either because the action was beyond the scope of statutory authority or because the findings underlying it lack support in the record. In making this determination, the Commission would be testing the state action against the applicable law under which its action was taken. Parties other than those who were denied transportation of gas by the state agency would not have the same right to file and originate proceedings before the Commission under this provision. It is possible, under the provisions of this section, that a negative decision by a State agency of jurisdiction to authorize transportation pursuant to State law that is ultimately decided in the State court system pursuant to State law, may present the conditions under which an applicant could, notwithstanding that action, apply to the Commission for contract carriage. Under this last resort procedure a person could go to the Commission, notwithstanding any State agency or State court decisions made pursuant to State law, and request contract carriage on the grounds that the State agency decision was arbitrary and capricious. The decision by the Commission would not override or in any way affect the decision of the State agency of jurisdiction or the decision of any State court. If the Commission grants the request for contract carriage, it

would be the reviewing body for purposes of modifications to that order.

An individual facility shall be deemed to have been historically served if that facility has received gas from a local distribution company since January 1, 1980, is not receiving gas as of the date of enactment of this Act, and has service facilities physically connected to the local distribution company.

Available capacity

Subsection (d) creates a rebuttable presumption concerning a pipeline's or an LDC's available capacity. A pipeline or LDC is presumed to have available capacity unless the Commission makes a determination that its total capacity is necessary to render adequate service to its existing customers. If the Commission finds that a pipeline or LDC has available capacity to transport only part of the gas requested to be transported, the Commission shall require the partial transportation unless such capacity is necessary to render adequate service to its existing customers.

To the extent that an existing customer of a pipeline elects to become a contract carriage customer, that portion of its previous load for which contract carriage is sought would become capacity for purposes of determining available capacity by the Commission.

The Committee also expects the Commission to approve contract carriage requests for interruptible and short-term contracts which would not interfere with peak usage that is otherwise protected in the determination of available capacity.

In making its determination of available capacity, the Commission must consider only the capacity available in the individual segment or portion of the pipeline which would be used for the requested contract carriage, not the capacity available in portions of the pipeline which would not be used for the requested contract carriage.

In making the determination of available capacity, the Commission is to include the gas usage of all existing customers, whether high priority or not, taking into account their historical peak load plus a growth factor.

Nothing in this legislation referring to peak usage as being the determinant of the amount of natural gas used by an existing customer would prevent contract carriage on an interruptible basis or on a short-term basis when peak usage of an existing customer might be avoided.

Protection of high priority users

Subsection (e) provides protection for high priority users. It requires any pipeline transporting contract carriage gas to continue to serve its existing customers, in preference to its contract carriage customers. In the event that the transporting pipeline later develops insufficient capacity to satisfy the transportation needs of both its existing customers and its contract carriage customers, the Commission shall require the pipeline to transport the contract carriage service priority volume, as defined, in preference to the volume necessary to meet the requirements of customers who are not high-priority users of such pipeline. The volume of natural gas determined by the Commission which is necessary to meet the cur-

rent requirements of the existing high-priority users of the gas transported on behalf of any contract carriage customer, taking into consideration all of the sources of supply of such contract carriage customer, shall constitute the contract carriage service priority volume.

Establishment of a contract carriage service priority would not place contract carriage customers at a disadvantage with respect to a pipeline's existing customers in the event of development of a capacity shortage on such pipeline's system.

The term "existing high priority use" is not intended to mean that a customer seeking contract carriage must have already existing high priority use of natural gas; a contract carriage customer may be given a priority if he qualifies for that amount of gas he is seeking to transport at that time.

Contract carriage compensation

Subsection (f) establishes the compensation for contract carriage transportation service. Any pipeline or LDC that voluntarily agrees to transport natural gas shall be permitted to charge an incentive allowance of up to $.05 per million Btu's, in addition to the just and reasonable or fair and equitable amount for transportation of such gas, unless and until the Commission determines that some other amount is appropriate as an incentive allowance in the public interest. The incentive allowance is not to be credited and flowed back to the customers of the transporting pipeline or LDC.

In the event that a pipeline or LDC protests the transportation of natural gas and is subsequently ordered to transport such gas, it shall be allowed to charge an appropriate incentive allowance, to be determined by the Commission. The allowance may exceed the just and reasonable or fair and equitable rate for such transportation by up to $.05 per million Btu's if, in the judgment of the Commission, the protest was a reasonable effort to protect the pipeline's or LDC's ability to continue to render adequate service to its existing customers. The Commission shall not require any portion of the incentive allowance to be credited and flowed back to the customers of such pipeline or LDC.

The Commission has authority to grant some amount other than $0.05 per million Btu's as an incentive allowance under the section. In the case of transportation by multiple pipelines, any incentive allowance granted by the Commission could be allocated by the Commission among the parties to the transaction.

The incentive allowance would not be provided for any pipeline that transports natural gas owned or produced by an affiliate of such pipeline; nor would it be provided for any local distribution company that transports natural gas owned or produced by an affiliate of such local distribution company.

The Commission is required within 90 days after enactment to promulgate regulations which require that the just and reasonable rates for the transportation service provided for contract carriage include an equitable percentage of the fixed costs of the transporting pipeline in order to protect all classes of customers, but particularly residential and commercial customers of the transporting pipeline. Such regulations are to be designed to require rates for transportation service that are comparable to transportation

charges included in the price of gas sold to pipeline customers receiving comparable service.

Construction of new facilities

Subsection (g) provides that upon request of a seller or purchaser of natural gas requesting transportation of natural gas, the Commission may order a pipeline or LDC to construct and operate minor facilities necessary for the transportation of such gas. The person requesting the transportation service is to pay for the construction and operation of such facilities.

Service obligation

Subsection (h) provides that if a customer of an interstate pipeline is a purchaser of natural gas transported by contract carriage, the service obligation of that pipleine to such customer under the Natural Gas Act is to be reduced, at the option of the pipeline, to the extent that the volumes purchased by the customers reduce the customer's requirements under its contract with the interstate pipeline.

Termination

Subsection (i) provides that upon the filing of a petition by any party to a transportation service agreement, the Commission may reduce or terminate the contract carriage transportation service if it determines that, because of unforeseen circumstances, the volumes of such natural gas supplied or delivered do not substantially comply with the terms of the contract carriage authorization. This subsection does not make terms of the sale of natural gas or the terms of the contract for the purchase of natural gas subject to the Commission's jurisdiction.

Regulations

Subsection (j) requires the Commission to issue final regulations to implement the requirements of this section within 120 days of enactment. The regulations are to provide for the self-implementation of transportation requested under this section in the absence of any protests, and they are to provide semiannual certification by each interstate pipeline of its total capacity, its available capacity and the amount of natural gas actually taken by its existing customers in months of peak natural gas usage during the previous five years.

Procedures

Subsection (k) establishes the procedures for contract carriage authorization. It requires all requests for transportation service to be filed with the Commission which shall publish them in the Federal Register and forward them to the appropriate State agency. It allows that any transportation service request may be protested by the pipeline or LDC to which it is addressed, or by any other interested person or State agency on the grounds that:

(1) the request, if implemented: (A) would render the pipeline or LDC unable to render adequate service to its existing customers; or (B) would render the pipeline or LDC unable to render adequate service to its remaining customers; or

(2) the seller or purchaser did not meet the notice requirements; or

(3) the seller or purchaser did not negotiate in good faith.

Any such protest must be filed within 30 days after publication of the request for transportation service. Interested parties are limited to only those who are or would be directly affected by the contract carriage transportation request, including local distribution companies and state agencies of jurisdiction.

Definitions

Subsection (1) establishes definitions for the purposes of the contract carriage section. In its determination of what constitutes rendering adequate service to its existing customers, the Commission may consider the effect of any transportation request on the financial viability of the pipeline or LDC to whom such request is directed to ascertain the impact of such transportation request on the rendering of adequate service to existing customers. In making this determination the Commission normally would not consider fluctuation in rates as a function of reaching a conclusion of rendering adequate service.

Subsection (1)(7) defines "State agency" to be included in this definition, a State agency would be required to meet two criteria: it would have authority to order contract carriage, and pursuant to State law, it would be required to act on a contract carriage request within a time certain. Other State agency powers and procedures, such as ratemaking methodology, would not be considered essential criteria for the purpose of qualifying under the definition.

Nothing in this section shall be deemed to limit the Commission's authority to impose a surcharge on gas transport pursuant to this section for the purposes of funding the Gas Research Institute.

The other definitions are self-explanatory.

SEC. 402. COORDINATION WITH THE NATURAL GAS POLICY ACT

Section 402 of the bill provides conforming amendments to coordinate the contract carriage provisions with the other provisions of the NGPA.

SEC. 403. EFFECTIVE DATE

Section 403 provides that the effective date of the Contract Carrier Authorization provisions (Sec. 402) is 120 days after enactment.

SEC. 404. AUTHORIZATION OF CERTAIN INTERSTATE SALES, TRANSPORTATION, AND ASSIGNMENTS

Section 404 amends sections 311 and 312 of the NGPA. It would provide FERC with expanded authority to allow more flexible purchase, transportation, and sales arrangements between and among interstate pipelines, intrastate pipelines, and local distribution companies.

Currently, section 311(a) of the Natural Gas Policy Act (NGPA) permits the Federal Energy Regulatory Commission to authorize transportation by interstate pipelines on behalf of any intrastate pipeline or local distribution company, and by intrastate pipelines

on behalf of any interstate pipeline or local distribution company served by an interstate pipeline. Current NGPA section 311(b) permits the Commission to authorize any intrastate pipeline to sell gas to any interstate pipeline or local distribution company. Current NGPA section 312 permits the Commission to authorize any intrastate pipeline to assign surplus gas to an interstate pipeline or local distribution company.

Section 404(a) would expand NGPA section 311(a) to permit the Commission to authorize any pipeline or local distribution company to transport gas on behalf of any person. Section 404(b) of the bill would expand NGPA section 311(b) to permit the Commission to authorize any pipeline or local distribution company to sell gas to any other pipeline or local distribution company.

Subsection 404(b)(8) adds a new requirement to subsection 311(b) of the NGPA. The subsection pertains to circumstances under which the Commission is required to disapprove any application for authorization of any sale under paragraph (1). New section 311(b)(7)(E) would require the Commission to disapprove an application for a section 311(b)(1) sale if such sale would involve, either directly or indirectly, the sale of natural gas made available to the seller as a result of purchasing natural gas outside the state of receipt in a covered transaction as defined in section 601(d).

Section 311(b)(8) of the Act is being added to provide that an intrastate pipeline or local distribution company purchasing natural gas outside the state of receipt in a covered transaction as defined in section 601(d) must file for and obtain prior express authorization from the Commission before engaging in a secton 311(b) sale. Section 311(b)(7)(E) is being added to expressly provide for the Commission to disapprove such a sale if it involves directly or indirectly, the sale of natural gas made available to the seller by virtue of purchasing natural gas outside the state of receipt in a covered transaction as defined in section 601(d). There shall be no disallowance under section 311(b)(7)(H) when the seller demonstrates that it had sufficient gas available from sources not attributable to gas purchased in a covered transaction outside the state of receipt to supply its demand inside the state and still make the section 311(b) sale. For example, assume that during a month the seller's average demand inside the state of receipt was 750 mcf per day, the seller had available other than from without the state of receipt supplies up to 1000 mcf per day, and the seller was also importing 200 mcf per day in a covered transaction from outside the state of receipt. The seller should continue to import the 200 mcf per day and would be entitled to make a Section 311(b) sale of up to 250 mcf per day. It is intended that the Commission shall make such determinations expeditiously to minimize uncertainty as to the proposed 311(b) sale.

Section 404(c) of the bill would expand section 312 to permit the Commission to authorize any pipeline or local distribution company to assign surplus gas to any other pipeline or local distribution company. In addition, the definition of "surplus gas" would be broadened.

SEC. 405. ACCESS TO INTERSTATE SUPPLY SOURCES

Section 405 amends sections 314 and 601 of the NGPA as necessary in order to provide for equal access to interstate supply sources. Section 601(d) provides intrastate pipelines and local distribution companies with equal access to purchase certain interstate supplies of natural gas. Purchases of natural gas in a covered transaction as defined in this section do not become subject to the Commission's jurisdiction under section 1(b) of the National Gas Act. Nor is any intrastate pipeline or local distribution company a "natural gas company" under section 2(6) of the Natural Gas Act, with respect to, or by reason of, such purchase.

Gas purchased by an intrastate pipeline or local distribution company in a covered transaction would become part of the intrastate pipeline's or local distribution company's system supply. Subsequent transactions also involving gas purchased in a covered transaction also do not become subject to the jurisdiction of the Commission under section 1(b) of the Natural Gas Act so long as such gas remains within the State of receipt.

A narrow exception to the requirement that natural gas purchased by an intrastate pipeline or local distribution company in a covered transaction remain in the State of receipt is provided so that intrastate pipelines and local distribution companies purchasing natural gas in a covered transaction will not be precluded from participating in transactions authorized under sections 302, 311, 312, 319, and 321 of the NGPA. It is not intended that the exception to the State of receipt requirement would permit intrastate pipelines or local distribution companies to act as "de facto" interstate pipelines, purchasing natural gas in a covered transaction and selling natural gas outside the State of receipt, without jurisdictional consequences. For example, it is not intended that an intrastate pipeline in Texas could purchase natural gas in a covered transaction in Oklahoma and, as a result of that purchase, sell natural gas to a customer in Michigan.

TITLE V—ADDITIONAL AUTHORITIES AND REQUIREMENTS

SEC. 501. LIMITATION ON INTERSTSATE PIPELINE SALES TO AFFILIATED INTRASTATE PIPELINES

Section 501 would prohibit an interstate pipeline from selling natural gas to an affiliated intrastate pipeline, Hinshaw pipeline, or local distribution company, at a greater percentage of maximum contract volumes than that sold by a non-affiliated interstate pipeline supplying cheaper gas, on average, to that affiliated entity. The Commission would be provided authority to make adjustments to this limitation, if necessary to prevent special hardship, inequity, or unfair distribution of burdens.

SEC. 502. LIMITATION ON OFF-SYSTEM SALES BY INTERSTATE PIPELINES

Section 502 would prohibit the Commission from issuing a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act for an off-system sale of natural gas if the sale is to occur at a price less than the applicable price indicator, plus

the just and reasonable rate for the transportation of the gas to the purchaser. The applicable price indicators would be the temporary price indicator (TPI) and free market price indicator (FMPI), as defined in new NGPA section 131. An off-system sale would be defined as a sale by a pipeline which is subject to the Commission's jurisdiction, and which (1) is excess to the pipeline's current demand, (2) is of a short-term, interruptible nature, and (3) is made to a customer outside or away from the pipeline's traditional or historic market area.

SEC. 503. LIMITED ANTITRUST EXEMPTION FOR INDEPENDENT PRODUCER COOPERATIVES

Section 503 would provide a limited antitrust exemption for the creation or operation of independent producer cooperatives to develop cooperative associations and to carry out any voluntary agreement or plan of action to market natural gas released for sale as a result of sections 316 and 317. It would make available to independent producers a defense to any civil or criminal action brought against them under the Federal antitrust laws, and similar state laws, provided that such actions are necessary to market the released natural gas, and that such actions are not taken for the purpose of reducing competition.

SEC. 504. SPECIAL RULE FOR CERTAIN ROYALTY PROVISIONS

Section 504 would amend the NGPA to provide for the determination of amounts payable as royalties for certain leases that base the royalty on market value where the price of the natural gas would be established pursuant to the provisions of this Act or pursuant to a contract renegotiated after the enactment of this Act.

TITLE VI—REPEAL OF CERTAIN RESTRICTIONS ON NATURAL GAS AND PETROLEUM USE AND PRICING

SEC. 601. AMENDMENTS TO POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

Sections 601 and 602 would repeal several sections of the Powerplant and Industrial Fuel Use Act of 1978 (PIFUA).

The bill would repeal (1) the prohibitions on the use of natural gas and petroleum as a primary energy source in new electric powerplants and new major fuel-burning installations; (2) the prohibition on the construction of new powerplants without alternate fuel capability; (3) the discretionary authority of the Secretary of Energy to prohibit nonboiler installations from using natural gas and petroleum as a primary energy source; and (4) all corresponding exemption provisions.

The bill also would repeal section 302 of PIFUA which authorizes the Secretary of Energy to prohibit the use of natural gas or petroleum as a primary energy source where coal or alternate fuel capability exists in existing major fuel-burning installations.

In addition, the Secretary of Energy's authority under section 401 of PIFUA to prohibit the use of natural gas as a primary energy source in certain boilers would be repealed.

The bill would repeal section 402 of PIFUA which prohibits certain installations of new outdoor lighting fixtures that use natural gas and certain uses of natural gas therein.

The bill would repeal section 405 of PIFUA which authorizes the Secretary of Energy to restrict, by rule, increases in the use of petroleum as a primary energy source in existing powerplants that used coal or another alternate fuel in 1977.

The bill would repeal sections 103(a) (16), (18), (19), and (29) of PIFUA, which provide certain definitions for general reference that would no longer be necessary due to the proposed repeal of other statutory provisions.

SEC. 603. REPEAL OF INCREMENTAL PRICING REQUIREMENTS

Section 603 of the bill would repeal title II of the Natural Gas Policy Act (NGPA), which provides for an incremental pricing system whereby low priority users of natural gas pay a larger share of the first sale acquisition costs for natural gas.

IX. Cost and Budgetary Considerations

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following estimate of the costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., July 29, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 308 and Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the Natural Gas Policy Act Amendments of 1983, as ordered reported by the Senate Committee on Energy and Natural Resources, July 26, 1983.

This bill revises the wellhead pricing provisions of the Natural Gas Policy Act of 1978 (NGPA), authorizes new contractual arrangements between sellers and purchasers, and repeals other laws affecting natural gas pricing and use.

The bill replaces the NGPA's wellhead pricing and decontrol formulas with a system based on contracts. It immediately decontrols wellhead prices for gas sold under new and certain renegotiated contracts, and gas released from existing contracts under the bill's "take-or-pay" provisions. The bill provides that all remaining gas volumes will be decontrolled at the end of the forty-fourth full month after the date of enactment. Parties to existing contracts may elect to phase-in decontrolled prices by using the bill's formulas for adjusting prices to a "free market price indicator" (FMPI), to be based on the prices paid under new contracts.

Various sections of the bill address the contractual authorities and obligations of sellers and purchasers. For example, the bill specifies when and under what terms sellers or purchasers may terminate contracts in response to a decision to phase-in decontrolled prices. Purchasers presently subject to "take or pay" re-

quirements may reduce purchases in each of the three years following enactment. Pipelines that terminate existing contracts or reduce purchases are obligated to continue to transport gas for the producer under terms specified in the bill. The bill also establishes standards and procedures under which pipelines must serve as "contract carriers," transporting gas on the behalf of other sellers and purchasers.

Responsibility for administering the bill is vested in the Federal Energy Regulatory Commission (FERC). The bill directs FERC to issue regulations on the FMPI, contract carriage, purchased gas cost adjustments and other provisions as may be necessary to implement the bill. FERC also must process all requests for contract carriage, hear and decide certain protested cases, and certify the curtailment priorities of the purchasers' load. Finally, the bill repeals several provisions in existing law governing the incremental pricing of natural gas and oil and gas use in utility and other fuel burning installations.

CBO estimates that enactment of this bill may result in additional receipts to the federal government totalling about $900 million over the fiscal years 1984 through 1988, primarily as a result of increased receipts from royalties on gas produced from federal lands. The administrative costs resulting from enactment are expected to be offset by the reduced workload in existing programs. This estimate assumes that the bill is enacted by October 1, 1983.

The impact of the bill on federal royalties cannot be estimated precisely because of the uncertainty regarding future market prices, the extent of phased-in decontrol, and the exercise of the contractual opportunities in the bill. It is assumed for the purposes of this estimate that all of the federal gas production will adjust to a market clearing price either through the bill's price adjustment mechanism or through existing contract authorities. Under this assumption, offsetting receipts to the federal government are estimated to increase by a total of about $900 million over the fiscal years 1984 through 1988, relative to the estimated receipts in the CBO baseline. Virtually all of these receipts would be derived from Outer Continental Shelf (OCS) production. The CBO estimate assumes, however, that 1984 receipts would drop approximately $100 million as the high cost OCS gas is phased-down to the FMPI. After all controls are lifted in 1987, receipts are estimated to increase by about $300 million each year. It should be noted that this estimate reflects the CBO baseline assumption for oil prices, which assumes a 1983 price of $31.54 per barrel. If oil prices exceed the prices in the baseline, the estimated receipts from gas royalties also would increase. Likewise, lower oil prices would reduce the increase in receipts.

The administrative costs incurred by FERC over the 1984 through 1988 period are expected to be offset by the reduced workload in existing programs. It is estimated that deregulating new contracts will eliminate almost half of the well category determinations, thereby saving about $1.8 million in 1984, and over $2.6 million each year thereafter. Repeal of the incremental pricing and fuel use restrictions are expected to reduce expenses at the Department of Energy by another $0.3 million in each of the five years. Once gas prices are decontrolled, the costs of producer rate and cer-

tificate regulation may be reduced by another $9 million each year. Based on these program savings, costs will be reduced by approximately $25 million over this period.

Most of the additional administrative costs are expected to occur in the first year after enactment. It is estimated that about $2 million will be spent in 1984 to issue regulations, establish the FMPI, and process the rate filings submitted in response to the bill. Once these programs have been established, these costs are expected to drop to less than $1 million each year, totalling about $5 million over the 1984 through 1988 period. CBO estimates that implementing the contract carriage program will increase costs by at least $1 million in 1984. If FERC must rule on a significant number of protested proceedings, costs would increase correspondingly about $2.5 million for every 100 cases. Even if the costs of this program are significantly higher, it is unlikely that FERC's total expenses over the 1984 through 1988 period will exceed the administrative savings resulting from enactment.

This cost estimate covers only the direct costs to the federal government as a result of enactment of this bill and does not measure possible indirect or secondary effects on the budget.

Enactment of this legislation is expected to increase revenues to states as a result of increased royalties from onshore production. The CBO estimates that federal payments to states would be increased by about $75 million over the 1984 through 1988 period as a result of this bill. Although states may incur expenses under the bill's contract carriage provisions, there is no clear basis for estimating these effects. Reductions in the workload for processing well category determinations are estimated to reduce total state administrative costs by about $1 million each year.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, Director).

X. REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out the provisions of this measure:

The Natural Gas Policy Act Amendments of 1978 is a regulatory measure in the sense of Senate Rule XXVI. However, the purpose of the bill is to provide a transitional mechanism for the gradual and phased Federal deregulation of natural gas prices currently regulated under the Natural Gas Policy Act of 1978. The effect of full implementation of the measure will be to reduce the scope of Federal regulation of the natural gas industry. This is accomplished by, first, the deregulation of natural gas prices on the date of enactment of three categories of natural gas and, second, the phased decontrol, by a date certain, of all other categories of natural gas. The bill also eliminates current incremental pricing requirements for natural gas. In addition, the bill, among other purposes, eliminates certain restrictions on the use of natural gas and

petroleum under the Powerplant and Industrial Fuel Use Act of 1978.

A reduction in paperwork consequently would result from full implementation of the Natural Gas Policy Act Amendments of 1978.

No personal information would be collected in administering the measure. Therefore, there would be no impact on personal privacy.

XI. Executive Communications

In addition to testimony received by the Committee on Energy and Natural Resources from the Administration and others, the Committee received the following communications from the Department of Energy:

TO THE CONGRESS OF THE UNITED STATES:

I am pleased to transmit to the Congress today proposed legislation entitled the "Natural Gas Consumer Regulatory Reform Amendments of 1983." The proposal is designed to benefit consumers by creating a system in which gas prices can be responsive to the pressures of the market. Also attached is an associated Statement which I have issued today.

Ronald Reagan

THE WHITE HOUSE,

February 28, 1983.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release February 28, 1983

STATEMENT BY THE PRESIDENT

It is a pleasure today to do what we long have anticipated: to send to Congress our proposal for correcting problems that have resulted from excessive regulation of the natural gas market. Our goal must be to obtain an adequate supply of natural gas at a reasonable price. Anything less is not sufficient and will not solve the problems currently faced by many Americans who depend on natural gas.

In recent months, thousands of people have written to me, to Members of Congress and to State and local officials expressing their distress about rapidly rising natural gas bills. Some areas of the country have been especially hard hit. It is clear that consumers are being poorly and unfairly served by the existing regulatory system -- a system which prevents natural gas producers and their customers from establishing contracts that respond to market forces, including downward pressure on prices that otherwise would occur as a result of plentiful gas supplies and declining oil prices. There is widespread agreement that something must be done to relieve the regulatory straight jacket in which the natural gas market now operates.

The proposal I am submitting to the Congress today will achieve the needed result. It is not a partisan plan, nor does it resort to seemingly simple "quick fixes," which would turn out to be neither simple nor quick and ultimately would not fix the problems. Instead, our approach is a comprehensive proposal that can -- and I believe will -- be supported by Congressmen and Senators of both parties and will be beneficial to the consumers they represent.

Our legislative package will allow, but not require, the parties to negotiate toward a free market, so that there will be real and long-term incentives to produce and market abundant gas supplies at the lowest possible cost. In this regard, I note the declines in gasoline and home heating oil prices that have occurred since we deregulated oil two years ago.

Although we believe free markets not only can, but will, achieve these results, the American consumer need not take this on faith alone. To assure that the consumer is protected, I have insisted on a provision which reverses the present law by providing that, until 1986, there will be a moratorium on the automatic pass-through of increased gas costs other than those increases attributable to inflation, which as you know has been declining steadily.

We believe these ideas offer the best achieveable combination of consumer protection and efficient, economic use of our valuable gas resources. I look forward to working closely with the Congress to obtain passage of this urgently needed legislation without delay.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release February 28, 1983

FACT SHEET

NATURAL GAS CONSUMER REGULATORY REFORM LEGISLATION

- The Natural Gas Policy Act (NGPA) of 1978 currently is causing natural gas prices to rise in spite of an oversupply of deliverable gas, declining oil prices, and a low rate of inflation.

- The proposed natural gas legislation submitted by the President to the Congress today will benefit consumers by creating a system in which gas prices can be responsive to the pressures of the market. By permitting renegotiation of contracts, this proposal will protect consumers from uneconomic natural gas price increases while eliminating regulatory barriers that prevent natural gas from being purchased, distributed and used efficiently.

- This proposal modifies, until January 1, 1986, the current Federal Energy Regulatory Commission regulations which allow pipelines immediately to pass through to consumers all wellhead cost increases. This will provide fairness to consumers and provide incentives to suppliers and pipelines to renegotiate contracts to minimize costs.

  -- Purchased gas costs automatically passed to consumers will be limited to the pre-enactment levels plus the increase attributable to inflation.

  -- Price increases above the rate of inflation may not be passed to consumers unless such increases specifically are approved by the Federal Energy Regulatory Commission after a public proceeding with appropriate standards.

- Under current market conditions, the proposed natural gas legislation should result in a first year drop in the average price of gas of 10 to 30 cents per thousand cubic feet (mcf). This estimate is based on assumptions about the extent of producer/pipeline renegotiations, the current excess of deliverable gas supplies, the rate of economic growth and what path oil prices will follow over the next few years. If, for example, oil prices were to fall below the cautious projections used (which do not take into account recent price reduction announcements by major foreign oil producing nations), we would expect gas prices to drop even further in the near-term.

- Under the proposed legislation, any new contracts for natural gas purchases may be negotiated and existing contracts may be renegotiated at the option of the contracting parties, and all these contracts will operate on whatever terms the parties agree. As an incentive to renegotiation, either party will be allowed to opt out of any pre-enactment contract beginning January 1, 1985.

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- Before 1986, the average price of gas purchased through renegotiated and new contracts will become the "gas cap," and the price for all regulated gas will be limited to the lower of either the "gas cap" or the NGPA-controlled price, with the exception of "tight sands" gas which is capped at its maximum lawful price at date of enactment.

- The price of gas not currently regulated -- so-called "deep gas" -- will be capped at the higher of the contract price as of the date of enactment or the "gas cap" until January 1, 1986, unless such contracts are renegotiated prior to that date.

- The "gas cap" will be applied as a ceiling for price escalator clauses in existing contracts until January 1, 1986, or sooner if such contracts are renegotiated.

- Until January 1, 1986, the legislative proposal will allow pipeline companies to reduce their minimum rates of take to 70 percent under those "take-or-pay" provisions that require pipelines to pay for a specified quantity of gas regardless of how much gas they can sell. If the purchaser elects to reduce the amount of gas taken under "take-or-pay" provisions, the seller may sell that portion of the gas elsewhere.

- The proposal will require pipelines to carry gas at an incentive rate where producers find buyers other than the pipeline concerned, there is available capacity, and existing pipeline customers are not penalized.

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A BILL

To correct deficiencies in the Natural Gas Policy Act of 1978, to protect natural gas consumers from price increases because of current distortions in the regulated market for natural gas, to provide for a free market for natural gas, to permit natural gas contracts to reflect the change from a regulated to a free market, to eliminate incremental pricing requirements for natural gas, to eliminate certain fuel use restrictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Natural Gas Consumer Regulatory Reform Amendments of 1983".

TABLE OF CONTENTS

TITLE I -- PURCHASED GAS COST

Sec. 101. Purchased Gas Cost.

TITLE II -- REMOVAL OF WELLHEAD PRICE CONTROLS AND REPEAL OF JURISDICTION OVER CERTAIN FIRST SALES

Sec. 201. Removal of Wellhead Price Controls.

Sec. 202. Repeal of Natural Gas Act Jurisdiction Over First Sales of Committed or Dedicated Natural Gas.

Sec. 203. Repeal of Provisions Allowing Reimposition of Price Controls and Report to Congress.

TITLE III -- TRANSITIONAL PRICE AND CONTRACT PROVISIONS

Sec. 301. Limitation on Ceiling Prices for Natural Gas.

Sec. 302. Repeal of Certain Contract Requirements and Imposition of Take-or-Pay Limits.

Sec. 303. Market-Out Provision.

Sec. 304. Effect of Gas Cap Price.

TITLE IV -- REMOVAL OF IMPEDIMENTS TO INTERSTATE MOVEMENTS OF GAS

Sec. 401. Authorization of Certain Interstate Sales, Transportation and Assignments.

Sec. 402. Access to Interstate Supply Sources.

Sec. 403. Contract Carrier Authorization.

TITLE V -- REPEAL OF CERTAIN RESTRICTIONS ON NATURAL GAS AND PETROLEUM USE AND PRICING

Sec. 501. Repeal of Certain Sections of the Powerplant and Industrial Fuel Use Act of 1978.

Sec. 502. Conforming Amendments.

Sec. 503. Repeal of Incremental Pricing Requirements.

TITLE I -- PURCHASED GAS COST

PURCHASED GAS COST

SEC. 101. (a) Title VI of the Natural Gas Policy Act of 1978 (15 U.S.C. §3431 et seq.) is amended by adding a new section 603 to read as follows:

"SEC. 603. LIMITATION ON THE PASSTHROUGH OF CERTAIN PURCHASED GAS COSTS.

"(a) LIMITATION ON PURCHASED GAS ADJUSTMENTS. -- Notwithstanding section 601(c) of this Act, for purposes of sections 4 and 5 of the Natural Gas Act, from the first day of the first month following enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1985, the part of a pipeline's rate that reflects purchased gas costs may not exceed its allowed rate for purchased gas cost, except as provided in subsection (b).

"(b) RECOVERY OF ADDITIONAL PURCHASED GAS COST. -- A pipeline may file an application under this subsection with the Commission to increase its rates to reflect any purchased gas cost that subsection (a) of this section prevents it from recovering. Notwithstanding section 4(e) of the Natural Gas Act, no increase to the rates of a pipeline that may be recovered under this subsection may go into effect unless the Commission, after opportunity for hearing, issues an order that grants the application, in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary and appropriate. The proceeding under this subsection shall be conducted by the Commission separately from proceedings on other rate applications that are filed under section 4 of the Natural Gas Act. In any such proceeding, the Commission shall allow recovery if it determines that the costs sought to be recovered were just,

reasonable, and prudently incurred. In making this determination, the Commission shall consider the reasonable availability of lower cost supplies to the pipeline and the necessity of such costs for the pipeline to render adequate service to its existing customers. Within sixty days of the date of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, the Commission shall prescribe rules for applications under this subsection. These rules shall facilitate expeditious decisions on these applications.

"(c) DEFINITIONS. --

"(1) ALLOWED RATE FOR PURCHASED GAS. -- The term "allowed rate for purchased gas" means, for a particular pipeline, for a particular month, the pipeline's average cost per million Btu's for purchased gas delivered to the pipeline during the month preceding the enactment of the Natural Gas Consumer Regulatory Reform Act of 1983 plus the adjustment amount for that particular month.

"(2) ADJUSTMENT AMOUNT. -- The term "adjustment amount" means, for a particular month, the difference between the national rate and the adjusted national rate for that particular month.

"(3) NATIONAL RATE. -- The term "national rate" means the national average cost per million Btu's for purchased gas delivered to all interstate pipelines during the month preceding the enactment of the Natural Gas Consumer Regulatory

Reform Amendments of 1983.

"(4) ADJUSTED NATIONAL RATE. -- The term "adjusted national rate" means --

"(A) for the month in which the Natural Gas Consumer Regulatory Reform Amendments of 1983 is enacted, the national rate multiplied by the annual inflation adjustment factor (as defined in section 101(a) of this Act) for that month; and

"(B) for any particular succeeding month, the adjusted national rate for the preceding month multiplied by the annual inflation factor (as defined in section 101(a) of this Act) for that particular month.

"(d) REPORTING REQUIREMENT. -- By the fifth day following the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, each interstate pipeline shall report its average cost per million Btu's for purchased gas delivered to it during the month preceding the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 and the volume of purchased gas delivered to it during that month.

"(e) PUBLICATION. -- The Commission shall compute and publish the adjustment amount for each month at least five days before the beginning of that month.

"(f) AFFILIATED PRODUCTION. -- No interstate pipeline may recover any costs associated with its own production or purchases from any affiliated producer to the extent such production or

purchases were not reduced to a percentage of deliverability no higher than the percentage of deliverability to which the pipeline had exercised contemporaneously a contractual right to reduce its takes of less expensive gas."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 602 the following:

"Sec. 603. Purchased Gas Cost."

TITLE II -- REMOVAL OF WELLHEAD PRICE CONTROLS AND REPEAL OF JURISDICTION OVER CERTAIN FIRST SALES

REMOVAL OF WELLHEAD PRICE CONTROLS

SEC. 201. Section 121 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3331) is amended to read as follows:

"SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES.

"(a) GENERAL RULE. -- The provisions of subtitle A respecting the maximum lawful price for any first sale of natural gas shall cease to apply to any first sale of natural gas subject to any contract that was executed or amended after the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, unless the contract specifically provides that the contract shall not operate to terminate the application of subtitle A.

"(b) HIGH-COST NATURAL GAS. -- Except as provided in subsection (a) of this section, with respect to the first sale of high-cost natural gas which is described in section 107(c)(1), (2),

(3), or (4), --

"(1) beginning on the effective date of the incremental pricing rule required under section 201, the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas shall cease to apply; and

"(2) beginning on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1985, the price shall not exceed the higher of the contract price on the date of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 or the gas cap price, if published, for the month during which the gas is delivered.

"(c) SPECIAL RULE FOR CERTAIN GAS. -- Except as provided in subsection (a), with respect to the first sale of gas covered by this subsection, --

"(1) beginning January 1, 1985, the provision of subtitle A respecting the maximum lawful price shall cease to apply; and

"(2) beginning January 1, 1985, through December 31, 1985, the price shall not exceed the gas cap price for the month during which the gas is delivered.

"(3) GAS COVERED BY THIS SUBSECTION. -- This subsection applies to --

"(A) new natural gas (as defined in section 102(c));

"(B) natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas --

"(i) was not committed or dedicated to interstate commerce on April 20, 1977; and

"(ii) is produced from a completion location which is located at a depth of more than 5,000 feet; and

"(C) natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if --

"(i) such natural gas was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act; and

"(ii) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date is higher than $1.00 per million Btu's.

"(d) REMOVAL OF WELLHEAD PRICE CONTROLS ON ALL NATURAL GAS, -- Except as provided in subsections (a), (b), or (c), beginning January 1, 1986, the provisions of subtitle A respecting maximum lawful price shall cease to apply to the first sale of any natural gas."

REPEAL OF NATURAL GAS ACT JURISDICTION OVER FIRST SALES OF COMMITTED OR DEDICATED NATURAL GAS

SEC. 202. Section 601(a)(1)(B) of the Natural Gas Policy Act of 1978 (15 U.S.C. §3431(a)(1)(B)) is amended to read as follows:

"(B) COMMITTED OR DEDICATED NATURAL GAS. -- Effective on January 1, 1985, for the purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission shall not apply solely by reason of any first sale of natural gas which was committed or dedicated to interstate commerce as of the day before the date of enactment of this subsection. Effective on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1984, for the purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of enactment of this Act and which is --

"(i) high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4) of this Act);

"(ii) new natural gas (as defined in section 102(c) of this Act);

"(iii) natural gas produced from any new, onshore production well (as defined in section 103(c) of this Act);

"(iv) natural gas exempted from the operation of subtitle A of title I pursuant to section 121(a); or

"(v) natural gas that was subject to a contract that expired, lapsed, was terminated pursuant to its own terms, or was terminated pursuant to the provisions of section 316 of this Act."

REPEAL OF PROVISIONS ALLOWING REIMPOSITION OF PRICE CONTROLS AND REPORT TO CONGRESS

SEC. 203. (a) Sections 122, 123, and 507 of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3332, 3333, and 3417) are repealed.

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by striking the items relating to sections 122, 123, and 507.

TITLE III -- TRANSITIONAL PRICE AND CONTRACT PROVISIONS

LIMITATION ON CEILING PRICES FOR CERTAIN NATURAL GAS

SEC. 301. (a) Title I of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3311-3333) is amended by adding the following new section:

"SEC. 111. LIMITATION ON CEILING PRICES FOR CERTAIN NATURAL GAS.

"(a) GENERAL RULE. -- Except as provided in section 121 of this Act, beginning on the date of enactment of this section, the

maximum lawful price of any first sale of natural gas subject to this subtitle shall not exceed the lower of the applicable price as calculated pursuant to sections 102 through 106, 108, and 109 or the gas cap price, if published, for the month during which the gas is delivered.

"(b) SPECIAL RULE FOR SECTION 107(c)(5) GAS. -- Except as provided in section 121 of this Act, beginning on the date of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, the maximum lawful price for gas described in subsection (c)(5) of section 107 of this Act shall be no higher than the maximum lawful price for such gas during the month in which the Natural Gas Consumer Regulatory Reform Amendments of 1983 are enacted.

"(c) DEFINITION OF GAS CAP PRICE. -- The term "gas cap price" means, for a particular month, the volume-weighted average price of natural gas that is estimated to be --

"(1) delivered during the second, third, and fourth months preceding that particular month; and

"(2) delivered during the first three months of deliveries under a contract filed under subsection (e) of this section.

"(d) CALCULATION AND PUBLICATION OF THE GAS CAP PRICE. -- Beginning with the fourth month after enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, the Commission (in accordance with section 101(a)(6) of this subtitle) shall

compute and publish the gas cap price for each month through December 1985.

"(e) FILING REQUIREMENT. -- A purchaser of natural gas subject to a first sale contract executed or amended on or after the date of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 shall file with the Commission within five days of the date on which the contract is executed or amended --

"(1) a summary of the contract and all ancillary agreements, including all pricing provisions;

"(2) the prices to be paid under the contract during the first three months of deliveries;

"(3) the estimated volumes (in millions of Btu's) to be delivered during the first year of the contract; and

"(4) any additional data required by the Commission.

This filing requirement does not apply in the case of an amendment of a contract for which data previously relating to price has been filed with the Commission under this subsection.

"(f) COMMISSION RULES. -- Within thirty days of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, the Commission shall issue rules to implement this section."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 110 the following:

"Sec. 111. Limitation on Ceiling Prices for Certain Natural Gas."

(c) Section 101(b)(5) of the Natural Gas Policy Act of 1978

(15 U.S.C. §3311(b)(5)) is amended by striking the period at the end and inserting the following:

", but in no event shall the operation of this paragraph be deemed to entitle any seller to collect a price in excess of that established pursuant to section 111."

(d) Section 105(b)(3)(B) of the Natural Gas Policy Act of 1978 is amended by adding a new sentence at the end to read as follows:

"This definition shall not include any clause which establishes the price for natural gas exempted from the operation of this subtitle pursuant to section 121(a)."

REPEAL OF CERTAIN CONTRACT REQUIREMENTS AND IMPOSITION OF TAKE-OR-PAY LIMITS

SEC. 302. (a) Section 315 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3375) is repealed, and a new section 315 is inserted in its place to read as follows:

"SEC. 315. IMPOSITION OF TAKE-OR-PAY LIMITS.

"(a) GENERAL RULE. -- In the case of any first sale contract in effect on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, which has not been amended subsequent to the date of enactment, and which contains a clause requiring a purchaser to take delivery of, or if not taken, to pay for, volumes of gas in excess of 70 percent of available deliverability from those wells included under a contract, the purchaser may exercise without obligation to pay for volumes not

taken in excess of 70 percent of well deliverability, a right not to accept delivery of any portion of the total volume which exceeds 70 percent of well deliverability. This right applies only to deliveries under a contract from the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1985.

"(b) NOTICE REQUIREMENT. -- Any purchaser electing to reduce volumes purchased pursuant to this section must give the seller a minimum of thirty days written notice prior to the date of delivery of the natural gas involved.

"(c) RELEASE OF CONTRACTUAL OBLIGATIONS. -- Upon receipt of the notice provided for in subsection (b), the seller shall have the right to terminate the contract with respect only to amounts not taken by reason of this section. If the seller elects to terminate the contract in accordance with this section, the purchaser shall tender to the seller full and unconditional release from all duties and obligations in contract or in law. The purchaser, if a transporter of natural gas, shall tender transportation in accordance with the provisions of section 316(d) of this Act.

"(d) DRAINAGE SITUATIONS. -- The Commission, by rule or order, may determine that this section shall not apply to the extent the production of the volume for which delivery is required to be taken is necessary in order to prevent drainage and protect the correlative rights of the person producing the

natural gas involved.

"(e) CASINGHEAD NATURAL GAS. -- This section shall not apply to casinghead natural gas.

"(f) CONTRACTS COVERING MORE THAN ONE CATEGORY OF NATURAL GAS. -- For purposes of this section, any contract establishing two or more categories of natural gas for purposes of pricing the natural gas delivered under the contract shall be treated as separate contracts for each such category."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by striking the item relating to section 315 and inserting in its place the following:

"Sec. 315. Imposition of Take-or-Pay Limits."

MARKET-OUT PROVISION

SEC. 303. (a) Title III of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3361-3375) is amended by adding a new section 316 to read as follows:

"SEC. 316. MARKET-OUT PROVISION.

"(a) GENERAL RULE. -- Beginning January 1, 1985, either party to a contract for the first sale of natural gas which was in effect on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 and which contract was not thereafter amended shall have the right to terminate the contract under the following conditions:

"(1) the party wishing to terminate the contract must give notice to the other party between November 16, 1984,

and November 15, 1985, and at least 45 days in advance, that the contract is to be terminated;

"(2) the party giving notice of termination does not materially breach the contract at any time prior to the end of the notice period; and

"(3) the party giving notice of termination must offer to the other party a full and unconditional release from all future duties and obligations in contract or in law relating to the contract, which release is effective upon termination of the notice period.

"(b) EFFECT OF SECTION 315 REDUCTION. -- A reduction of a take-or-pay obligation pursuant to section 315 of this Act shall not be considered an amendment for purposes of subsection (a) of this section.

"(c) OBLIGATIONS OF PARTIES UPON TERMINATION. -- Neither party to a contract terminated pursuant to this section shall have an obligation to perform any act because of the contract on and after the effective date of the termination of the contract, except that a party that has received a good or service under the contract before the effective date of its termination shall have a duty to pay for that good or service as provided for in the contract and that a party that has received payment under the contract for a good or service that was not provided before the effective date of its termination shall have a duty to make restitution of the payment in cash or in kind in accordance with

the contract.

"(d) TRANSPORTATION OBLIGATION. --

"(1) IN GENERAL. -- In the event that a contract is terminated under this section, a pipeline that was a party to the terminated contract shall have an obligation to transport natural gas for a producer that was a party to the terminated contract. The obligation of the pipeline shall not exceed on an annual basis the largest volume delivered under the contract during any twelve consecutive months in the thirty-six months prior to its termination.

"(2) LIMITATION OF OBLIGATION. -- The Commission, or in the case of an intrastate pipeline the State agency with jurisdiction over that pipeline, upon application by the pipeline and after opportunity for hearing, may order a limitation of the obligation of the pipeline under this subsection if compliance with the obligation would require construction of additional facilities or would impair the ability of the pipeline to render adequate service to its existing customers.

"(3) CONSIDERATION. -- The consideration for any transportation provided under this subsection shall be $.05 per million Btu's plus the cost of such transportation, as established by the appropriate State or Federal regulatory body, unless the Commisison has established, by rule, a different rate as just compensation for such transpor-

tation. No amount of such consideration shall be required to be credited and flowed back to the customers of such pipeline."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 315 the following:

"Sec. 316. Market-Out Provision."

EFFECT OF GAS CAP PRICE

SEC. 304. (a) Title III of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3361-3375) is amended by adding a new section 316 to read as follows:

"SEC. 316. EFFECT OF GAS CAP PRICE.

"(a) PRICE ESCALATOR CLAUSES. -- Except for natural gas described in section 107 of this Act, no price escalator clause may operate to establish a price for natural gas which is subject to the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas higher than the gas cap price. For purposes of this subsection, the term "price escalator clause" means any contract clause that provides for a periodic price increase, either on a fixed or indefinite basis, or that references other natural gas prices, Federally imposed price ceilings, or prices of other commodities.

"(b) AREA RATE CLAUSES. -- For purposes of an area rate clause, the gas cap price is a Federally established rate or price. After December 31, 1985, the gas cap price for December

1985 is a Federally established rate or price."

(b) The table of contents of the Natural Gas Policy Act of 1978 (U.S.C. §3301 note) is amended by inserting after the item relating to section 317 the following:

"Sec. 318. Effect of Gas Cap Price."

TITLE IV -- REMOVAL OF IMPEDIMENTS
TO INTERSTATE MOVEMENTS OF GAS
AUTHORIZATION OF CERTAIN INTERSTATE SALES,
TRANSPORTATION AND ASSIGNMENTS

SEC. 401. (a) fection 311(a) of the Natural Gas Policy Act of 1978 (15 U.S.C. §3371(a)) is amended by --

(1) amending subparagraph (A) of paragraph (1) to read as follows:

"(A) IN GENERAL. -- The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of any person."

(2) inserting "AND LOCAL DISTRIBUTION COMPANIES" after "INTRASTATE PIPELINES" in the paragraph (2) heading;

(3) inserting in paragraph (2) "or local distribution company" after "intrastate pipeline";

(4) amending subparagraph (A) of paragraph (2) to read as follows:

"(A) IN GENERAL. -- The Commission may, by rule or order, authorize any intrastate pipeline or local distribution company to transport natural gas on behalf

of any person."

(5) in subparagraph (B)(ii)(I) and (II) of paragraph (2), inserting "or company" after "pipeline".

(b) Section 311(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. §3371(b)) is amended by --

(1) amending paragraph (1) to read as follows:

"(1) IN GENERAL. -- The Commission may, by rule or order, authorize any pipeline or local distribution company to sell natural gas to any pipeline or local distribution company.

(2) amending paragraph (2) by --

(A) striking "MAXIMUM FAIR AND EQUITABLE PRICE" after the subparagraph designator "A" and inserting in its place "INTRASTATE PIPELINES AND LOCAL DISTRIBUTION COMPANIES";

(B) inserting "or local distribution company" following "pipeline" and "or local distribution company's" following "pipeline's" wherever they appear; and

(C) inserting "(including storage)" after "transportation" in clause (i) of subparagraph (B);

(D) adding a new subparagraph (D) to read as follows:

"(D) INTERSTATE PIPELINES. -- The rates and charges of any interstate pipeline with respect to any sales authorized under subsection (b)(1)(A) shall be just and reasonable (within the meaning of the Natural Gas

Act).";

(3) in paragraph (4), striking "pipeline's" and inserting in its place "seller's", and striking "INTRASTATE" in the heading and inserting in its place "EXISTING";

(4) in paragraphs (4)-(7), except for subparagraph (5)(a)(i), striking "intrastate pipeline" or "pipeline" wherever they appear and inserting in their place "seller";

(5) in paragraph (5)(A)(i), striking "interstate pipeline or local distribution" and inserting in its place "purchasing"; and

(6) adding a new paragraph (8) to read as follows:

"(8) DEFINITION OF SELLER. -- For purposes of this subsection, the term 'seller' means any person that sells gas under paragraph (b)(1)."

(c) Section 312 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3372) is amended --

(1) by amending subsection (a) to read as follows:

"(a) AUTHORIZATION OF ASSIGNMENTS. -- The Commission may, by rule or order, authorize a pipeline or local distribution company to assign, without compensation, to any other pipeline or local distribution company, all or any portion of the assignor's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate."; and

(2) by amending subsection (c) to read as follows:

"(c) SURPLUS NATURAL GAS. -- For purposes of this section,

the term 'surplus natural gas' means, with respect to any pipeline or local distribution company, any natural gas which exceeds the then current demands of such person for natural gas, as determined by --

"(1) the Commission, or

"(2) the State agency having regulatory jurisdiction over that person."

ACCESS TO INTERSTATE SUPPLY SOURCES

SEC. 402. (a) Section 314 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3374) is amended by --

(1) striking "first" in subsection (a), and

(2) amending subsection (b) to read as follows:

"(b) NATURAL GAS COVERED BY THIS ACT. -- For purposes of subsection (a), the term 'natural gas covered by this Act' means --

"(1) for any first sale contract, natural gas --

"(A) which is not subject to the jurisdiction of the Commission under the Natural Gas Act by reason of section 601(a)(1)(A) or (B);

"(B) the sale in interstate commerce of which --

"(i) is authorized under section 302(a) or 311(b); or

"(ii) is pursuant to an assignment under section 312(a); or

"(C) the transportation in interstate commerce of which is --

"(i) pursuant to any order under section 302(c) or section 303(b), (c), (d), or (h), or

"(ii) authorized by the Commission under section 311(a); or

"(2) for any contract, natural gas the sale or transportation of which under the contract is not in interstate commerce by reason of section 601(d) of this Act."

(b) Section 601 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3431) is amended by adding new subsections (d) and (e) to read as follows:

"(d) LIMITATION OF COMMISSION JURISDICTION OVER INTRASTATE TRANSACTIONS. --

"(1) GENERAL RULE. -- No intrastate pipeline or local distribution company shall be subject to the jurisdiction of the Commission under the Natural Gas Act by reason of purchasing natural gas in a covered transaction.

"(2) SUBSEQUENT TRANSACTIONS. -- Any transportation or sale of natural gas purchased in a covered transaction which occurs beyond the point at which such gas is received in the facilities of the purchaser in the covered transaction shall not be in interstate commerce (within the meaning of the Natural Gas Act) and shall not be subject to the jurisdiction of the Commission under the Natural Gas Act to the extent that such gas remains in the State of purchase.

"(3) NATURAL-GAS COMPANY. -- For purposes of the Natural

Gas Act, the term "natural-gas company" (as defined in section 2(6) of that Act) shall not include any person by reason of, or with respect to, any transportation or sale of natural gas if the transportation or sale is not subject to the jurisdiction of the Commission solely by reason of paragraph (2) of this subsection.

"(4) STATE OF PURCHASE RULE. -- For purposes of this subsection, natural gas shall be deemed to remain in the State of purchase if the gas is not transported outside the State in which it was received into the facilities of the purchaser of the gas in a covered transaction, unless such transportation occurs in connection with --

"(A) transportation authorized under sections 302(a) or 311(a) of this Act, or

"(B) a sale or assignment authorized under sections 311(b) or 312 of this Act.

"(5) DEFINITION OF COVERED TRANSACTION. -- For purposes of this subsection, the term "covered transaction" means --

"(A) a first sale of gas --

"(i) which is not subject to the jurisdiction of the Commission under the Natural Gas Act by reason of subparagraphs (A) or (B) of paragraph (1) of subsection (a),

"(ii) which is produced on the outer Continental Shelf, or

"(iii) which is transported pursuant to an order issued under section 317 of this Act;

"(B) a sale or assignment authorized under sections 302(a), 311(b), or 312(a) of this Act; or

"(C) a sale for resale by any person not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act.

"(e) NONDISCRIMINATION PROVISION. -- The Commission may not condition or deny any authorization of the sale or transportation of natural gas under this Act or the Natural Gas Act on the basis of whether the gas is consumed in the interstate market or the intrastate market."

CONTRACT CARRIER AUTHORIZATION

SEC. 403. (a) Title III of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3361-3375) is amended by adding a new section 317 to read as follows:

"SEC. 317. CONTRACT CARRIER AUTHORIZATION.

"(a) IN GENERAL. -- Upon application by a producer of natural gas or by a purchaser of natural gas from a producer, the Commission shall order any interstate pipeline to carry gas under contract between producer and purchaser upon such terms and subject to such conditions as it considers just and reasonable if the Commission finds that such pipeline has available capacity, that no undue burden will be placed upon such pipeline, that no construction of new facilities would be required, and that such

order would not impair the ability of such pipeline to render adequate service to its existing customers. The Commission may implement this section by rule or order.

"(b) CONSIDERATION. -- The consideration for any transportation provided under this section shall be $.05 per million Btu's plus the cost of such transportation, as established by the Commission, unless the Commission has established, by rule, a different rate as just compensation for such transportation. No amount of such consideration shall be required to be credited and flowed back to the customers of such pipeline."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 316 the following:

"Sec. 317. Contract Carrier Authorization."

TITLE V -- REPEAL OF CERTAIN RESTRICTIONS ON NATURAL GAS AND PETROLEUM USE AND PRICING

REPEAL OF CERTAIN SECTIONS OF THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

SEC. 501. (a) The following sections of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301 et seq.) are repealed:

(1) sections 102(a)(16), (a)(18), (a)(19), and (a)(29) (42 U.S.C. §8302(a)(16), (a)(18), (a)(19), and (a)(29));

(2) sections 201 and 202 (42 U.S.C. §§8311 and 8312);

(3) section 302 (42 U.S.C. §8342);

(4) section 401 (42 U.S.C. §8371);

(5) section 402 (42 U.S.C. §8372); and

(6) section 405 (42 U.S.C. §8375).

(b) The table of contents in section 101(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301(b)) is amended by striking the items relating to the sections repealed by subsection (a) of this section.

CONFORMING AMENDMENTS

SEC. 502. (a) Section 102 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301) is amended by striking "and major fuel-burning installations" and "and new" wherever these phrases appear.

(b) Section 103 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8302) is amended --

(1) in subsection (a)(13)(B), by --

(A) striking clause (ii)(III);

(B) striking "; or" at the end of clause (ii)(II), and inserting a period in its place; and

(C) inserting "and" at the end of clause (ii)(I);

(2) in subsection (a)(15), by striking "or major fuel-burning installation" and "or new" wherever these phrases appear;

(3) in subsection (a)(20), by striking "or major fuel-burning installation";

(4) by redesignating subsections (a)(17), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), (a)(25), (a)(26), (a)(27), and (a)(28) as subsections (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), and (a)(25);

(5) in subsection (b), by striking or "major fuel-burning installation" wherever this phrase appears;

(6) in subsection (b)(1)(D), by striking everything after "synthetic gas involved" and inserting in its place a period; and

(7) by striking subsection (b)(3), and redesignating subsection (b)(4) as subsection (b)(3).

(c) Section 104 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8303) is amended to read as follows:

"The provisions of this Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States."

(d) Section 303 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8343) is amended --

(1) by striking "or installation" and "or installations" wherever the phrases appear;

(2) by striking "or 302" wherever the phrase appears;

(3) by striking subsection (a)(3);

(4) by amending subsection (b)(1) to read as follows:

"(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 301(b) in existing

electric powerplants.";

(5) in subsection (b)(3), by striking "or major fuel-burning installation"; and

(6) by amending the last sentence of subsection (b)(3) to read as follows:

"Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order."

(e) Section 403 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8373) is amended by striking --

(1) in subsection (a)(1), "major fuel-burning installation, or other unit" and the comma immediately preceding this phrase and "installation, or unit" and the comma immediately preceding this phrase;

(2) in subsection (a)(2), "installation, or other unit" and the comma immediately preceding that phrase, and "installation, or unit" and the comma immediately preceding that phrase;

(3) in subsection (a)(2), the last sentence; and

(4) subsection (a)(3).

(f) Section 404 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8374) is amended by striking —

(1) in subsection (c), "new or" in the phrase "applicable to any new or existing electric powerplant"; and

(2) subsection (g).

(g) Section 701 of the Powerplant and Industrial Fuel Use

Act of 1978 (42 U.S.C. §8411) is amended by striking --

(1) in the last sentence of subsection (b), "or installation";

(2) subsection (c);

(3) in the title of subsection (d), "AND EXEMPTIONS";

(4) in the first sentence of subsection (d)(1), "or any petition for any order granting an exemption (or permit)";

(5) in subsection (d)(1)(B), "or in the consideration of such petition";

(6) in subsection (f), "or a petition for an exemption (or permit) under this Act (other than under section 402 or 404),"; and

(7) subsection (g).

(h) Section 702 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8412) is amended by striking --

(1) in the title of subsection (a), "OR EXEMPTION";

(2) in subsection (a), "or granting an exemption (or permit)";

(3) subsection (b), and redesignating subsection (c) as subsection (b);

(4) in the first sentence of subsection (b)(1) (as redesignated), "or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b),";

(5) in the first sentence of subsection (b)(1) (as

redesignated), "such rule, order, or denial is published under subsection (a) or (b)" and inserting in its place "such rule, or order is published under subsection (a)";

(6) in the first sentence of subsection (b)(2) (as redesignated), "the rule, order, or denial" and inserting in its place "the rule or order";

(7) in the second sentence of subsection (b)(2) (as redesignated), "(or denial thereof)"; and

(8) in subsection (b)(3) (as redesignated), "any such rule, order, or denial" and inserting in its place "any such rule or order".

(i) Section 711 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8421) is amended by striking in the first sentence of subsection (a), "or major fuel-burning installation".

(j) Section 721 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8431) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

(k) Section 723 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8433) is amended by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c).

(l) Section 731 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8441) is amended by striking --

(1) "or major fuel-burning installation" wherever the phrase appears; and

(2) "title II or" in subsections (a)(1) and (g)(3).

(m) Section 745 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8435) is amended by striking in the first sentence of subsection (a), "from new and existing electric powerplants and major fuel-burning installations" and inserting in its place "from existing electric powerplants".

(n) Section 761 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8471) is amended by striking --

(1) in subsection (a), "any existing or new electric powerplant or major fuel-burning installation" and inserting in its place "any existing electric powerplant"; and

(2) in subsection (b) --

(1) "new or" in the phrase "in the case of any new or existing facility"; and

(2) "except to the extent provided under section 212(b) or section 312(b)" and the comma immediately preceding that phrase.

REPEAL OF INCREMENTAL PRICING REQUIREMENTS

SEC. 903. (a) Subject to subsections (b) and (c) of this section, title II of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3341-3348) is repealed, and the items relating to title II are stricken from the table of contents of that Act.

(b) A rule promulgated by the Commission under title II of the Natural Gas Policy Act of 1978 shall continue in effect only with respect to the flow-through of costs incurred before the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, including any surcharges based on such costs.

(c) The Commission may take appropriate action to implement this section.

SECTION-BY-SECTION

NATURAL GAS CONSUMER REGULATORY REFORM AMENDMENTS OF 1983

TITLE I -- PURCHASED GAS COSTS

Section 101 would amend Title VI of the Natural Gas Policy Act of 1978 (NGPA) to add a new section 603, entitled "Limitation on the Passthrough of Certain Purchased Gas Costs." This section would impose a moratorium until 1986 on the automatic passthrough to natural gas customers of price increases that result from an interstate pipeline's paying higher prices for natural gas. A pipeline could increase the price to its customers to reflect higher acquisition costs for natural gas only if the Federal Energy Regulatory Commission ("Commission") approved recovery of such costs after a hearing in which the Commission considered the question of whether these higher costs were just, reasonable, and prudently incurred.

Currently, a pipeline can recover its costs of acquiring natural gas at the wellhead and from other pipelines ("purchased gas costs") by means of either a general rate proceeding or a purchased gas adjustment ("PGA") proceeding. A general rate proceeding reviews all aspects of a pipeline's operation, while a PGA proceeding considers only a pipeline's purchased gas costs. A pipeline can apply in either type of proceeding to raise its rate to reflect increased purchased gas costs and the rate increase can, and in a PGA proceeding usually does, go into effect after a one day suspension, subject to refund if the Commission ultimately determines the change in rate is not just and reasonable. Alternatively, the Commission

can suspend the effectiveness of the rate increase for no more than five months, at which time the rate goes into effect subject to refund.

Section 603(a) would prohibit the immediate passthrough of purchased gas costs to the extent such costs have increased at a rate higher than the rate of inflation. Section 603(b) would provide that rate increases prohibited by section 603(a) could not go into effect unless the Commission made an affirmative determination, after providing an opportunity for hearing to interested persons, that the costs were just, reasonable, and prudently incurred. In making this determination the Commission would be required to consider the availability of lower priced gas and the need of the pipeline to acquire the gas in order to render adequate service to its existing customers. The Commission also could consider other factors, including the physical depletion of old gas. In order to minimize the amount of time a pipeline would have to wait to find out whether the pass through of any costs in excess of inflation would be allowed, this section would establish a special Commission proceeding to review applications to pass through such costs. The Commission would be required to adopt rules for such proceedings that would facilitate expeditious decisions.

Section 603 would not affect all increases to a pipeline's rate, but only increases in the purchased gas cost component

of the rate that exceeded the pipeline's allowed rate for purchased gas costs. Each pipeline would have a different allowed rate. Section 603(d) would define the term "allowed rate" as the average price a particular pipeline paid for gas delivered to it during the month preceding the enactment of this Bill plus an "adjustment amount" to reflect inflation. Section 603(d) would define the "adjustment amount," which would be the same for each pipeline, as the difference between the average price all pipelines paid for gas delivered during the month preceding the enactment of this Bill and that average price adjusted to reflect inflation since the enactment of this Bill.

Subsection (f) would establish a rateable purchase requirement for interstate pipelines. Under this requirement, an interstate pipeline would be required to reduce its own production or purchases from any affiliated producer to a percentage of deliverability no higher than the percentage of deliverability to which the pipeline had exercised contemporaneously a contractual right to reduce its takes of less expensive gas. If a pipeline violated this rateable purchase requirement, it would be prohibited from passing through any purchased gas costs that resulted from the violation.

TITLE II -- REMOVAL OF WELLHEAD PRICE CONTROLS
AND REPEAL OF JURISDICTION OVER
CERTAIN FIRST SALES

Section 201 would amend NGPA section 121 to provide for the ultimate elimination of all price controls on first sales

of natural gas. New subsection (a) would establish the general rule, under which natural gas sold under contracts executed or amended after the enactment of this Bill would be free from any NGPA price controls. This provision would permit natural gas prices to be established immediately in accordance with market forces and not the existing artificial price ceilings. Subsection (b) would establish a price cap for high-cost section 107(c)(1)-(4) gas sold under contracts in effect on the date of enactment of this Bill. The cap would be the higher of the contract price in effect on the date of enactment of this Bill or the gas cap price (see section 301). The cap would be effective from the date of enactment through December 31, 1985. However, the cap would be removed immediately from any gas which qualified for free market prices under subsection (a). Subsection (c) would remove price controls from section 102 gas, certain section 103 gas, and certain intrastate natural gas on January 1, 1985, as currently scheduled under the NGPA. However, during 1985, this gas could not exceed the gas cap price, unless the gas is sold under a contract covered by subsection (a). Subsection (d) would remove price controls on January 1, 1986, from all first sales of natural gas not previously decontrolled and thus end the Federal government's involvement in establishing wellhead price for natural gas.

Section 202 would eliminate the Commission's jurisdiction under the Natural Gas Act (NGA) to regulate non-price aspects

(such as certification and abandonment) of first sales of natural gas. NGPA section 601(a)(1) currently exempts from such jurisdiction first sales of natural gas that was not dedicated to interstate commerce prior to the enactment of the NGPA or that was described in certain sections of the NGPA (such as high-cost gas in section 107). Section 202 would amend NGPA section 601(a)(1)(B) to eliminate the Commission's NGA jurisdiction over any first sale of natural gas after 1984. NGPA section 601(a)(1)(B) also would be amended to provide for the immediate elimination of Commission jurisdiction over any gas exempted from price controls by reason of the post-enactment execution or amendment of a contract, and thus make the first sale of such gas free from both price and non-price regulation. In addition, any gas that previously had been sold under a contract that lapsed, expired, terminated by its own terms, or terminated because of the market-out provision of new NGPA section 316 after the enactment of the Bill would be exempted from the Commission's NGA jurisdiction. This provision would allow the fullest operation of the market by permitting the gas to be sold to any purchaser and not just the purchaser under the terminated contract.

Section 203 would repeal those sections of the NGPA that would have allowed the President or the Congress to reimpose price controls.

TITLE III -- TRANSITIONAL PRICE
AND CONTRACT PROVISIONS

Section 301 would add a new section 111 to the NGPA that would provide a transitional pricing mechanism for natural gas currently subject to price controls. Section 111 would establish a new limit, or price cap, for all currently price controlled natural gas, except section 107 gas. This price cap would be the lesser of the maximum lawful price under any other section of the NGPA and the "gas cap price", which would be the average price of natural gas under recent new or amended contracts which could reflect market prices because of new NGPA section 121(a). Until the gas cap price is computed and published, the NGPA prices would apply. Section 107(c)(5) natural gas, including "tight sands" and other types of gas, would be capped at the applicable maximum lawful price under the NGPA for such gas in the month this Bill is enacted. However, the Commission would retain its current authority under section 107(b) to lower the incentive price that such gas currently receives and, if it does so, the new, lower price would be applicable. The price limits established by section 301 would terminate on January 1, 1986, and could be terminated earlier if a producer and purchaser agree to a new or renegotiated contract. (See discussion of section 201 for treatment of section 102, certain section 103, and certain intrastate gas during 1985.)

The gas cap price would reflect the current market price for natural gas and thus would eliminate distortions under the NGPA by which maximum lawful prices act as "price floors" preventing gas prices from responding to downward market pressures. In order to reflect current market conditions, the gas cap price would be a volume-weighted average of prices paid during the first three months of deliveries under any contract that had been executed or renegotiated since the date of enactment of this Bill. This average would be based on the prices estimated to be paid for gas estimated to be delivered under all such contracts during the second, third, and fourth months before the month for which the gas cap price is published. The estimated prices and volumes would be required to be filed with the Commission within five days of the post-enactment execution or amendment of a contract. Beginning with the fourth month following the enactment of this Bill, the Commission would be required to calculate the gas cap price for each month through December 1984. The Commission would publish the gas cap price for each month at least five days before the beginning of that month.

The gas cap price would be calculated as follows. If this Bill is enacted on March 15, 1983, July 1983 would be the first month for which a gas cap price would be published. The July gas cap price would be the average of the estimated prices paid for estimated deliveries from March 15 through

May 31, 1983. The gas included in the average would be all gas estimated to be delivered during the first three months of operation of a contract whose execution or amendment removed the gas from price controls. The average would be weighted to reflect the various volumes of gas at different prices. The August gas cap price would be the average price for certain gas estimated to be delivered in April, May, and June, and so forth. The effect of dropping March and adding June would be to make the gas cap price a rolling average that reflects the most recent market prices.

Section 302 would repeal NGPA section 315 and substitute a new section 315 entitled "Imposition of Take-or-Pay Limits" giving purchasers the right to refuse volumes in excess of 70 percent of available deliverability from wells included under a first sale contract.

Currently, section 315(a) provides that the Commission can specify the minimum duration of certain contracts. Section 315(b) provides purchasers with a right of first refusal in certain circumstances. Section 315(c) permits the Commission to require the filing of contracts for the first sale of natural gas. The repeal of the existing NGPA section 315, along with the elimination of the Commission's NGA jurisdiction over first sales (see section 202), would remove all non-price regulation of first sales of natural gas.

New section 315 would free purchasers to respond to market signals and reject deliveries of high priced gas that was not marketable. New section 315(a) would give purchasers subject to take-or-pay requirements under contracts not amended after the date of enactment a right to refuse delivery of volumes in excess of 70% of available deliverability from those wells included under the contract. Purchasers that exercised this right would also be relieved of their contractual obligation to pay for volumes not taken under this provision. This right could be exercised with respect to deliveries made from the date of enactment through December 31, 1985. New section 315(b) would require a purchaser electing to refuse deliveries to give notice to the seller at least 30 days prior to the date of the delivery being reduced. New section 315(c) would enable a seller that has been notified that its purchaser has elected to refuse delivery of certain volumes to protect its ongoing financial requirements by allowing the producer to terminate the contract with respect to the volumes refused. If a producer terminated a contract in this manner, the refusing purchaser would be subject, however, to certain transportation obligations described in new section 316(d). New section 315(d) would allow the Commission to determine, by rule or order, that the election to refuse delivery under this section shall not apply where production of the volume subject to a take-or-pay requirement is necessary to prevent drainage. New section 315(e) exempts casinghead natural gas from this section. Section 315(f) would treat contracts

covering two or more pricing categories of natural gas as separate contracts for each category.

Section 303 would add a new section 316 to the NGPA, entitled "Market-Out Provision", that would allow either party to a contract for the first sale of natural gas to terminate the contract. Any termination under this section could not go into effect before January 1, 1985 or after December 31, 1985.

Section 316(a) would permit both the purchaser and seller under a first sale contract in effect on the date of enactment and not amended thereafter to terminate the contract as follows. The party terminating the contract would be required to give notice to the other party at least 45 days in advance of the termination of the contract. This notice could not be given before November 16, 1984 or after November 15, 1985. The party terminating could not materially breach the contract prior to the end of the 45 day notice period and would be required to release the other party from all future obligations under the terminated contract. Section 316(b) would provide that, for purposes of this section, a reduction of a take-or-pay obligation under new section 315 would not be considered an amendment of the contract. This provision would make clear that a pipeline did not have to choose between reducing its take-or-pay obligation immediately or waiting until 1985 to terminate the entire contract. Section 316(c) would require

a party that had received a good or service under the contract prior to termination under this section to make payment for that good or service, and also would require a party that received payment for a good or service that was not provided before the effective date of termination to make restitution of the payment, in cash or in kind, in accordance with the contract. This provision would ensure that parties to a terminated contract resolve on an equitable basis any questions concerning advance payments, prepayments or other matters. It is intended that any payments returned to a pipeline under this provision would be flowed through to the pipeline's customers to the extent that the pipeline's rates previously had reflected the payments. Section 316(d) would require a terminating pipeline to transport a volume of natural gas not to exceed, on an annual basis, the largest volume delivered under the contract during any twelve consecutive months in the thirty-six months immediately prior to termination. This provision would permit a producer to seek another buyer for the gas sold under the terminated contract even if the former purchaser controlled all the transportation facilities servicing the producer. Upon application by the affected pipeline and after hearing, the Commission or State agency with jurisdiction over that pipeline could limit by order the transportation obligation if it determined that full compliance would require the pipeline to construct additional facilities or would impair the pipeline's ability to render adequate service to existing customers.

Section 304 would add a new section 318 to the NGPA entitled "Effect of Gas Cap Price," that would define the effect of the gas cap price on certain contract clauses. New section 318(a) would provide that no price escalator clause could operate to establish a price for natural gas subject to NGPA Title I (other than section 107 gas) higher than the gas cap price. New section 318(b) would provide that, for purposes of any area rate clause, the gas cap price is a Federally established rate or price.

TITLE IV -- REMOVAL OF CERTAIN IMPEDIMENTS TO INTRASTATE MOVEMENTS OF GAS

Section 401 would facilitate transactions between the interstate and intrastate markets without subjecting those transactions to certification procedures under section 7 of the Natural Gas Act (NGA), and without requiring intrastate companies to become jurisdictional "natural gas companies" under the NGA. Current NGPA section 311(a) permits the Commission to authorize transportation by interstate pipelines on behalf of any intrastate pipeline or local distribution company, and by an intrastate pipeline on behalf of any interstate pipeline or local distribution company served by an interstate pipeline. Current NGPA section 311(b) permits the Commission to authorize any intrastate pipeline to sell gas to any interstate pipeline or local distribution company. Current NGPA section 312 permits the Commission to authorize

any intrastate pipeline to assign surplus gas to an interstate pipeline or local distribution company. These provisions were designed to permit the then existing "bubble" of gas in intrastate markets to flow into interstate markets that were facing gas shortages. Sections 401(a), (b), and (c) would amend these NGPA provisions to allow natural gas to flow both ways to correct imbalances in any market. Section 401(a) would would expand NGPA section 311(a) to permit the Commission to authorize any pipeline or local distribution company to transport gas on behalf of any person. The use of the phrase "any person" is not intended to reflect any view concerning the persons on whose behalf gas currently can be transported under section 311(a). Section 401(b) would expand NGPA section 311(b) to permit the Commission to authorize any pipeline or local distribution company to sell gas to any other pipeline or local distribution company. Section 401(c) would expand section 312 to permit the Commission to authorize any pipeline or local distribution company to assign surplus gas to any other pipeline or local distribution company. In addition, the definition of "surplus gas" would be broadened.

Section 402(a) would expand NGPA section 314. Currently, NGPA section 314 voids anticommingling clauses with respect to certain first sales. Section 402(a) would expand section 314 to void anticommingling and similar clauses in contracts for the resale and transportation of natural gas that is not

deemed to be in interstate commerce because of NGPA section 601(d) (see section 702(b)). This change is designed to facilitate transactions between the interstate and intrastate markets.

Section 402(b) would add a new subsection (E) to NGPA section 601 which would establish the principle that, in most instances, intrastate pipelines should not be subject to the Commission's jurisdiction just because the intrastate pipeline acquires gas from another State as long as there is no regulatory gap concerning the sale and transportation of such gas. New NGPA section 601(E)(1) would provide that purchasers of gas in certain "covered transactions" would not become subject to the Commission's jurisdiction because of such purchases. New section 601(E)(2) would provide that transactions downstream from such covered transactions would not, solely on that basis, be considered to be in interstate commerce, and that intrastate recipients of this natural gas would not thereby be considered to be "natural gas companies" under the NGA. Covered transactions would be defined as the first sale of natural gas not subject to the jurisdiction of the Commission by reason of section 601(a)(1)(A) or (B), the first sale of gas produced on the outer Continental Shelf, a sale or assignment under sections 312(a), 311(b) or 312(a), a first sale under section 317 (the new "Contract Carrier" provision), and a sale for resale by a Hinshaw pipeline. This section would only apply to natural gas that remained

in the State in which the purchaser in the covered transaction received the gas, except if gas is transported outside of that State in connection with a transaction under sections 302(a), 311(a), 311(b) or 312.

Section 402(b) also would add a new subsection (e) to NGPA section 601, entitled "Nondiscrimination Provision." New subsection (e) would prohibit the Commission, in exercising its jurisdiction over any gas under either the Natural Gas Act or the NGPA, from discriminating against either intrastate or interstate purchasers.

Section 403 would add a new section 317 to the NGPA providing for "Contract Carrier Authorization." Section 317(a) would provide that, upon application by a producer or a producer's customer, the Commission shall order an interstate pipeline to transport gas on behalf of the producer and purchaser, under such terms and conditions as the Commission determines to be just and reasonable. This section is intended to open the natural gas market to the operation of the laws of supply and demand to the fullest extent possible by allowing producers and users of natural gas to deal directly with one another. There would be limitations on this provision to protect the pipeline and its customers. A pipeline would not be required to construct new facilities. In addition, the Commission could find the transportation would impair service to the pipeline's customers, and thus limit or disallow the

application. Finally, the Commission is given the option to implement this section either by rule or order. Section 317(b) would provide that in consideration for this carriage, the pipeline would receive five cents per million Btu's in addition to the normal transportation rate which the pipeline would receive under the Natural Gas Act for such transportation. The five cents would not be credited and flowed back to the pipeline's customers, but would be reserved for the pipeline's shareholders. Except for the special treatment of the five cents, the revenue from transportation under this provision would be treated in the same fashion as revenue from transportation under the Natural Gas Act.

TITLE V -- REPEAL OF CERTAIN RESTRICTIONS ON NATURAL GAS AND PETROLEUM USE AND PRICING

Sections 501 and 502 would repeal several sections of the Powerplant and Industrial Fuel Use Act of 1978 (FUA).

The bill would repeal (1) the prohibitions on the use of natural gas and petroleum as a primary energy source in new electric powerplants and new major fuel-burning installations, (2) the prohibition on the construction of new powerplants without alternate fuel capability, (3) the discretionary authority of the Secretary of Energy to prohibit nonboiler installations from using natural gas and petroleum as a primary energy source, and (4) all corresponding exemption provisions.

The bill would repeal section 302 of FUA which authorizes the Secretary of Energy to prohibit the use of natural gas or petroleum as a primary energy source where coal or alternate fuel capability exists in existing major fuel-burning installations.

The Secretary of Energy's authority under section 401 of FUA to prohibit the use of natural gas as a primary energy source in certain boilers would be repealed.

The bill would repeal section 402 of FUA which prohibits certain installations of new outdoor lighting fixtures that use natural gas and certain uses of natural gas therein.

The bill would repeal section 405 of FUA which authorizes the Secretary of Energy to restrict, by rule, increases in the use of petroleum as a primary energy source in existing powerplants that used coal or another alternate fuel in 1977.

The bill would repeal subsections 103(a)(16), (a)(18), (a)(19) and (a)(29) of the Powerplant and Industrial Fuel Use Act of 1978, which provide certain definitions for general reference that are no longer necessary due to the proposed repeal of many statutory provisions.

Section 503 would repeal title II of the NGPA, which provides for an incremental pricing system whereby low priority users of natural gas pay a larger share of the first sale acquisition costs for natural gas, and thus would end this regulatory system. Acquisition costs incurred prior to the enactment of this bill would be passed through to users on the basis of the existing Commission regulations for incremental pricing. Any acquisition costs incurred after the enactment of this bill would be dealt with without regard to incremental pricing requirements.

THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

Official Committee File

May 4, 1983

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
MAY 5 1983

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

You have requested the Administration's position on the May 4 amendment pertaining to distributors' potential load loss offered by Senator Bradley to the contract carriage provision of S.615. We oppose the amendment.

As originally conceived by Senator Bradley, his amendment would have encouraged voluntary arrangements, created a presumption in favor of contract carriage in the case of mandatory arrangements, and clarified several technical aspects. As conceived, the Bradley amendment received our support, and I directed my staff to work with Senator Bradley's staff, and the committee staff, on the technical details.

We can support a contract carriage amendment that would (1) create a rebuttable presumption a pipeline has available capacity to transport gas; (2) give the Commission authority to increase the incentive for a pipeline voluntarily transporting gas and to deny all or part of the incentive to a pipeline which unreasonably protests a contract carriage request; (3) in the event of insufficient capacity give gas transported for high-prority uses priority over gas transported to the pipeline's customers for low-priority uses; (4) clarify that the Commission was to require the construction of minor facilities necessary for a contract carriage arrangement if the producer or purchaser of the gas agrees to pay for the construction; (5) include intrastate pipelines in a manner acceptable to the Committee; and (6) protect (as the Warner amendment does) a distributor from financial collapse as a result of carriage-related load loss.

The markup is now at the stage where the provision would contain these features, but the May 4 Bradley amendment goes much further. It would bar industrial companies from participation in contract carriage if they are presently being served, or historically have been served, by a local distribution company, unless the distributor and the responsible

state agency concur. This limitation stifles the broad based competition that contract carriage is designed to create. If contract carriage is to be an effective means of bringing the lowest cost gas to market, it must be available to the broadest constituency.

We are aware of the load loss fears expressed by local distribution companies about contract carriage. We believe fears about distributor financial jeopardy and huge increases to residential consumers are unfounded. In our judgment, industrial end-users will continue to utilize local distribution companies now serving them to transport contract carriage gas in the overwhelming number of circumstances, because it will cost them less to do so. Industrials who do bypass their current distributors will do so only if, even with all the extra costs involved in this by-pass, it is still cheaper to compete in this way. In these circumstances, which we view as limited, we see no reason to support the economically inefficient local service.

Of course, local distribution companies are not helpless. Contract carriage will permit them to compete in the gas fields for the cheapest gas available. Because of the volume and flexibility which results from their serving many customers with varying needs, and because of their long experience in the gas business, they will be formidable competitors for available supplies.

I regard a strong, broad-based, and workable carriage provision as essential to S.615. It is vital to the creation of a truly competitive market at the wellhead, where signals are transmitted between producers and those at, or close to, the point of consumption, and it is also vital to reversing the present serious load loss problem, where industrials are switching to cheaper alternatives.

S.615 with a contract carriage provision incorporating the features which we described earlier in the letter will enable natural gas to be competitive and help prevent fuel switching. This amendment would only exacerbate the problems of switching and frustrate competitive pricing of natural gas.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

Official Committee File

THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

July 18, 1983

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
JUL 19 1983
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

You have asked for our assessment of natural gas legislation as it currently is pending before the Committee on Energy and Natural Resources. Since I first testified on the natural gas issue, the Committee, under the leadership of you and Senator Johnston, has worked long and hard to reach a compromise on legislation reportable to the full Senate. Your June 26 bill, as subsequently amended, is fair, comprehensive legislation, and moves us toward the goal of providing an adequate supply of natural gas at reasonable prices.

In my testimony, I indicated there are three essential elements which will be needed in any natural gas legislation. These are:

1. protection of the American gas consumer against unreasonable price increases resulting from the status quo, or from new legislative action,

2. adjustment of contracts entered into in a regulatory environment which has contributed substantially to the present, intolerable situation in which gas costs escalate even though gas is in abundant supply, and

3. gas deregulation by a date certain, to capture the benefits of competition in the marketplace, so that the current distorted conditions will not recur.

The current Committee bill contains a variety of provisions which are intended to accommodate these objectives. It is comprehensive legislation that looks to the market to solve problems both in the short term and the long. As such, it provides a basis for the assurance that gas consumers will have an adequate supply of gas at a fair price for years to come and includes the necessary provisions to insure the protection of consumers during the phased transition to deregulation.

Although, in our view, a number of improvements still could be made to the Committee's present bill, I am more interested in facilitating the legislative process. Thus, we will not

advocate additional changes in Committee even if these amendments would move the Committee's bill closer to the Administration's original bill.

Committee members of both parties, representing both consuming and producing states, have labored hard to reach this compromise. Virtually every imaginable problem has been considered and much success already has been achieved. Accordingly, we support the effort to complete action on the bill and to report legislation to the floor.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

cc: Honorable J. Bennett Johnston
Ranking Minority Member

Department of Energy
Washington, D.C. 20585

March 8, 1983

MEMORANDUM FOR: The Secretary

FROM: Acting General Counsel

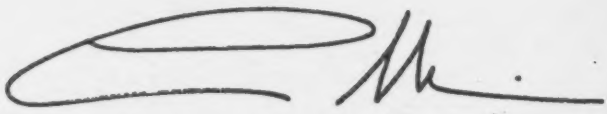
SUBJECT: Constitutionality of Federal Natural Gas Legislation Modifying Private Sales Contracts

You have requested my opinion as to whether the Congress has the constitutional power, by legislation, to authorize unilateral alteration of existing contractual relationships among segments of the natural gas industry. For the reasons stated more fully in the attached memorandum, I have concluded that the Congress, without question, has that power.

The constitutional source of this power is Article I, §8, which grants to the Congress the power to "regulate Commerce with foreign Nations, and among the several States...." The court cases examining the relationship between federal regulatory activities and private contracts uniformly have held that, in effect, the terms of private contracts must yield to a constitutionally-permissible regulatory scheme adopted by the Congress. The permissible ambit of Congress' power to regulate interstate commerce, as defined in Supreme Court decisions over many years, is extremely broad. Though Article I, §10 of the Constitution provides that "No State shall ... pass any ... law impairing the obligation of contracts," this restriction is not applicable to the Federal Government. Even as to the states it is not applied with "literal exactness." Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398, 428 (1934).

The existence of this power does not make appropriate its indiscriminate application. The Department's original antipathy to its broad exercise is quite understandable. As to these contracts, however, I understand that in developing its proposal the Department was confronted, time and again, with their provisions in seeking ways to relieve natural gas consumers from bearing the entirety of the economic risk associated with transition to a decontrolled natural gas market.

Many of these contract terms, I understand, together with a pattern of reliance on significant volumes of expensive gas, were directly traceable to prior dislocations in the natural gas market which themselves are atributable to controls under the Natural Gas Act and Natural Gas Policy Act. In these circumstances it seems not only constitutionally appropriate but almost inevitable that any legislation that would provide a workable transition from detailed and complex regulation of the natural gas market would have to address, either expressly or by its necessary effect, commercial relationships established under the prior regulatory regime.



Eric J. Fygi

Attachment

March 8, 1983

CONSTITUTIONALITY OF FEDERAL NATURAL GAS
LEGISLATION MODIFYING PRIVATE SALES CONTRACTS

I. Summary

Congress clearly has the constitutional authority to modify and otherwise affect existing contracts for the sale of natural gas. On the basis of its power under the Commerce Clause, Congress has declared unenforceable or modified certain clauses in natural gas contracts and has authorized the Federal Energy Regulatory Commission (Commission) and its predecessor, the Federal Power Commission, to modify natural gas contracts. It is well settled that the sale of commodities, such as natural gas, traded in interstate commerce or whose trade substantially affects interstate commerce, is within Congress' power under the Commerce Clause and that Congress may pass laws to prohibit or restrict such trade in any manner, including laws that restrict the price and terms on which the commodities are sold. There is no constitutional prohibition against exercising its power to modify contracts. The Impairment Of Contracts Clause only applies to the States. Congress has plenary power under the Commerce Clause unless the exercise of this power violates an express constitutional limitation. Only under extraordinary circumstances, not present in the Natural Gas Consumer Regulatory Reform Amendments of 1983, would other sections of the Constitution limit Congress' power under the Commerce Clause.

II. Discussion

A. Power of Congress Under the Commerce Clause

Article I, §8 of the Constitution grants to Congress the power to "regulate Commerce with foreign Nations, and among the several States...." Numerous decisions of the Supreme Court have confirmed the breadth of this legislative power and the discretion it vests in Congress to pass laws governing interstate commerce and the terms and conditions under which private persons may participate in such commerce. The leading case is Gibbons v. Ogden, 22 U.S. 1 (1824) (the supremacy of the power of Congress under Article I, §8 to license ships employed in the coastal trade upheld over a conflicting state statute), in which Chief Justice Marshall described the nature and extent of Congress' power under the Commerce Clause as follows:

> We are now arrived at the inquiry, What is this power?
>
> It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at election, are, in this,

> as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied, to secure them from its abuse. They are the restraints on which the people must often rely solely, in all representative governments....
>
> 22 U.S. at 196-197 (emphasis added).

In NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) (the constitutionality of the National Labor Relations Act of 1935 affirmed), Chief Justice Hughes described the reach of Congress' power under the Commerce Claure as follows:

> The fundamental principle is that the [congressional] power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement;" to adopt measures "to promote its growth and insure its safety;" "to foster, protect, control and restrain."
>
> 301 U.S. at 36-37 (citations omitted).[1/]

In a more recent case, the Court concluded:

1/ The extreme reach of the Commerce Clause can be seen in Wickard v. Filburn, 317 U.S. 111 (1942), in which the Court upheld federal marketing quotas applicable to wheat consumed on the farm on which it was raised. See also U.S. v. Darby, 312 U.S. 100 (1941), in which the Court upheld The Fair Labor Standards Act of 1938 and held that Congress may regulate any "activities intrastate which have a substantial effect on the [interstate] commerce or the exercise of Congressional power over it." Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 281 (1940) (federal agency may establish maximum and minimum prices for coal); U.S. v. Carolene Products Co., 304 U.S. 144 (1938) (Congress may prohibit the sale of imitation milk); Texas & N.O.R. Co. v. Railway Clerks, 281 U.S. 548 (1930) (railroads may not interfere with employees' formation of a union); Highland v. Russell Car Co., 279 U.S. 253 (1929) (federal government may override an apparent contract and dictate the price of coal); Philadelphia, B & W R.R. Co. v. Schubert, 224 U.S. 603 (1912) (carriers are liable for employees' injuries despite contracts limiting such liability); Baltimore & O.R.R. Co. v. I.C.C., 221 U.S. 612 (1911) (hours of labor on railroad limited); Patterson v. Bark Endora, 190 U.S. 169 (1903) (advances of wages to seamen prohibited); Addystone Pipe & Steel Co. v. U.S., 175 U.S. 211 (1899) (federal antitrust laws upheld).

> The power of Congress in this field [of interstate commerce] is broad and sweeping; where it keeps within its sphere and violates no express constitutional limitation it has been the rule of this Court, going back almost to the founding days of the Republic, not to interfere. 379 U.S. at 305. 2/

The foregoing cases support the power of Congress to enact legislation regulating natural gas in interstate commerce, including any and all contractual terms and conditions of its sale. As these cases state, this power is plenary unless there is an express constitutional limitation against the action taken by Congress. There is no constitutional prohibition against the impairment of contracts by Congress. The prohibition against passage of any "Law impairing the Obligation of Contracts" in Article I, §10 only applies to the states. 3/

Indeed, in the so-called "Gold Clause Cases," the Court put to rest any notion that preexisting private contracts could limit Congress' power to legislate under the Commerce Clause. Norman v. B. & O. R. Co., 294 U.S. 240 (1935). The Court held

2/ E.g., Katzenbach v. McClung, 379 U.S. 294, at 305 (1964) (Civil Rights Act of 1964, Title II, held constitutional; court will ordinarily defer to a congressional determination that an activity substantially affects interstate commerce); Heart of Altanta Motel v. U.S., 379 U.S. 241 (1964) (companion case to Katzenbach v. McClung); Maryland v. Wirtz, 392 U.S. 183 (1968) (extension of Fair Labor Standards Act to cover employees of schools and hospitals, including those operated by states, held constitutional).

3/ Other constitutional provisions that may appear to limit economic regulation do not apply to the proposed federal legislation under consideration here. The prohibition against passage of any "ex post facto Law" in Article I, §9 applies only to penal criminal statutes. Calder v. Bull, 3 U.S. 386 (1798).

that Congress could expressly invalidate provisions in private bonds (including those of states and their subdivisions) calling for payment in gold or gold coin and direct that such payment be made exclusively in legal tender, which had been devalued in reference to the "free market" price of gold. Holders of various bonds issued by private companies had demanded payment in gold coin, asserting that the federal law prohibiting such payment contravened the Due Process Clause of the Fifth Amendment, which these holders asserted prevented Congress from impairing the obligations of these contracts. 294 U.S. at 246-47. They argued that Congress lacks the power directly to enlarge or diminish an obligation. Id. at 243. The Court dismissed these arguments, stating:

> [T]he point is pressed that [the] express stipulations for gold payments constitute property.... [T]he contestants urge that the Congress is seeking not to regulate the currency, but to regulate contracts, and thus has stepped beyond the power conferred.
>
> This argument is in the teeth of another established principle. Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.
>
> ....
>
> The principle is not limited to the incidental effect of the exercise by the Congress of its constitutional authority. There is no constitutional ground for denying to the Congress the power expressly to prohibit and invalidate contracts although previously made, and valid when made, when they interfere with the carrying out of the policy it is free to adopt.
>
> 294 U.S. at 307-10.

The subsequent sections of this memorandum explore the possibility that a limitation is imposed by the Due Process Clause or the Takings Clause of the Fifth Amendment, or by the Tenth Amendment. The final section discusses prior regulation of natural gas contracts under the Commerce Clause.

B. Substantive Due Process

The Fifth Amendment to the U.S. Constitution directs that under federal law no person shall "be deprived of life, liberty, or property, without due process of law...." For many years the Due Process Clause of the Fifth Amendment was the primary constitutional provision argued as a barrier to the constitutionality of federal economic legislation under the Commerce Clause. These arguments were based on a doctrine called substantive due process.

Substantive due process was first used to invalidate economic legislation in Allgeyer v. Louisiana, 165 U.S. 578 (1897) (Louisiana law prohibiting any act to effect insurance on property in Louisiana issued by any company not admitted to do business in the state held a violation of the Due Process Clause of the Fourteenth Amendment). The Court stated that the Due Process Clause[4/] guaranteed the liberty of a person "to enter into all contracts which may be proper,

4/ The Fourteenth Amendment contains a Due Process Clause applicable to the States which is essentially the same as the Due Process Clause of the Fifth Amendment. The doctrine of substantive due process treated both Due Process Clauses alike.

necessary, and essential" to his livelihood or avocation. 165 U.S. at 589. Until 1937 all federal and state economic legislation ran the risk of being held by the courts to violate the substantive due process standards of the Constitution. Disregarding strong dissents, the Court read into the due process clauses a guarantee of a liberty of contract which the federal government or a state could not abridge unless it could show that the economic regulation served a public interest lying within the government's power to protect.[5/] In other words, the due process clauses generally preserved a laissez faire economic system, placing certain economic activities beyond the reach of any governmental regulation.

Despite the denial of the justices sustaining substantive due process challenges, it was clear that this doctrine forced the courts to evaluate the wisdom of the economic policies adopted by Congress or the state legislatures and to sit in judgment as a super-legislature. The explosion of federal economic regulation in response to the Great Depression eventually forced the Supreme Court to reformulate its theory of substantive due process as a guardian of economic rights. In Nebbia v. New York, 291 U.S. 502 (1934), the

5/ E.g., Adkins v. Children's Hospital, 261 U.S. 525 (1923) (federal law establishing agency to fix minimum wages for female employees in D.C. held invalid); Adair v. U.S., 208 U.S. 161 (1908) (federal law prohibiting railroads from firing an employee for membership in a union held invalid); Lochner v. New York, 198 U.S. 45 (1905) (state law fixing maximum working hours for bakers held invalid).

Court upheld against a due process challenge a state law establishing an agency to set maximum and minimum prices for milk. The Court stated that, as appropriate, states could regulate businesses in any aspect even if the businesses were not public utilities, common carriers or affected with an extraordinary public interest. The Court emphasized the discretion the legislature had in such cases was not subject to reevaluation by the judiciary under the due process clauses:

> So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy many reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio....
>
> ....
>
> The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty. 291 U.S. at 537-39.

The Supreme Court overruled earlier cases that marked the apex of the protection of economic rights by substantive due process.[6/] More recent cases have confirmed the practical disappearance of substantive due process. In Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59 (1978), the Court upheld the federal Price-Anderson Act, limiting liability in case of a nuclear power plant accident, against a substantive due process attack. The Court noted the strong "presumption of constitutionality" of economic regulations, for which the Court defers "to the Congressional judgment unless it is demonstrably arbitrary or irrational." 438 U.S. at 83-84. The Court examined this judgment as reflected in the legislative history and found that the judgment had an apparently reasonable basis. In Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1978), the Court noted that the appellants' "substantive due process argument requires little discussion." The Court concluded that "this argument rests simply on an evaluation of the economic wisdom of the [state] statute" and does not limit the legislature's power, regardless of the "ultimate economic efficacy of the statute," which forced major refiners to divest themselves of ownership

6/ E.g., Adkins v. Children's Hospital, expressly overruled by West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937) (state minimum wage law valid); Adair v. U.S., overruled in substance by Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177 (1941) (federal law may prohibit an interstate carrier from firing an employee for union activity); Lochner v. New York, overruled sub silentio by Bunting v. Oregon, 243 U.S. 426 (1916) (state law may fix maximum hours for most industrial workers).

and operation of retail outlets for the sale of motor gasoline in the state. 437 U.S. at 125-26. The Court was content to rest its determination of the law's rationality on a one-sentence recitation of its purpose. In Ferguson v. Skrupa, 372 U.S. 726 (1963), the Court upheld a state law and reversed a district court judgment finding a Kansas statute, restricting the business of debt collection to attorneys, in violation of the Due Process Clause of the Fourteenth Amendment. The lower court had mistakenly relied on a substantive due process case, Adams v. Tanner, 244 U.S. 590 (1917), that like the other such cases listed above is no longer good law. The Court emphasized:

> Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy....
>
> ....
>
> The doctrine that prevailed in [these substantive due process] cases... has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies who are elected to pass laws.... Legislative bodies have broad scope to experiment with economic problems....
>
> ....
>
> Whether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is of no concern of ours.

372 U.S. at 729.

C. Equal Protection Under the Due Process Clause

The Due Process Clause of the Fifth Amendment imposes an equal protection obligation on the Federal Government similar to the equal protection obligation imposed on the states by the Fourteenth Amendment. With the rejection of substantive due process as a limit on economic regulation, recent constitutional challenges to such regulation have emphasized equal protection arguments. The Supreme Court, however, has been as unwilling to invalidate economic legislation on the basis of equal protection as on the basis of substantive due process, recognizing that to do so on either basis would embroil the Court in the legislative process.7/

Any equal protection challenge has a heavy burden to overcome since "[s]ocial and economic legislation . . . that does not employ suspect classifications or infringe on fundamental rights must be upheld against equal protection attack when the legislative means are rationally related to a legitimate governmental purpose." Hodel v. Indiana, 452

7/ E.g., Schweiker v. Wilson, 450 U.S. 221 (1980) (upheld against equal protection attack refusal of federal government to provide Supplemental Security Income benefits to inmates of public mental institutions that do not receive Medicaid funds); U.S. Railroad Retirement Board v. Fritz, 449 U.S. 166, 174-179 (1980) (rejected argument that Congress violated equal protection when it restructured railroad retirement in a manner that preserved dual retirement benefits for some employees but not others); Jefferson v. Hackney, 406 U.S. 535 (1972) (state can provide lower welfare benefits to recipients of Aid to Families with Dependent Children than to the sick and elderly).

U.S. 314, 331 (1981) (Congress acted rationally to allow variances for mining operations on steep slopes and mountaintops but not on prime farmlands). The magnitude of this burden can be gauged by the tenor of the Court's language in Vance v. Bradley, 440 U.S. 93 (1979), where it upheld mandatory retirement for Foreign Service employees at age 60, even though no mandatory retirement age is established for Civil Service employees, including those who serve abroad. The Court stated:

> "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted. Thus, we will not overturn such a statute unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." Id. at 97. 8/

The Court will not second-guess Congress where there is a conceivable basis for the classification adopted by Congress, especially if it explains this basis. Accordingly, an

8/ See also Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, (1912) (classification of theatres for license fees based on price of admission upheld even though some theatres with higher admission prices actually had lower earnings on the basis that "[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations - [however] illogical, it may be, and unscientific"); Lindsley v. National Carbonic Gas Co., 220 U.S. 61, 78-79 (1911) (state may regulate the pumping of mineral springs differently on the basis of whether the water is pumped for resale or for other purposes as long as "any state of facts reasonably can be conceived that would sustain" the classification).

equal protection challenge to the Natural Gas Consumer Regulatory Reform Amendments would not succeed.

D. The Takings Clause

The Takings Clause of the Fifth Amendment provides that private property shall not be taken for public use without just compensation. Although the Supreme Court has recognized that economic regulations can limit and even destroy the value of private property, it has been most reluctant to find that such regulations constitute takings for which the government must pay compensation:

> "To require compensation in all such circumstances would effectively compel the government to regulate by purchase. Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.
>
> ....
>
> The Takings Clause, therefore, preserves governmental power to regulate, subject only to the dictates of justice and fairness.'" Andrus v. Allard, 444 U.S. 51, 65 (1979) (citations omitted).

In many instances, the Court has dismissed "taking" challenges on the ground that, while the challenged government action caused economic harm, it did not interfere with interests that were sufficiently bound up with the reasonable expectations of the claimant to constitute "property" for Fifth Amendment purposes.[9/] In assessing claims for damages

9/ E.g., Regional Rail Reorganization Cases, 419 U.S. 102, 125-136 (1974) (non-contractual retirement right is not property); United States v. Willow River Power Co., 324 U.S. 499 (1945) (interest in level of river to maintain power head is not property); United States v. Chandler-Dunbar Water Power Co., 229 U.S. 53 (1913) (no property interest can exist in navigable waters).

based on alleged takings, the Court traditionally has found the diminution of anticipated profits less compelling than the reduction of the value of other property-related interests as a basis for finding a taking of property. The Court observed in Andrus v. Allard that the "loss of future profits--unaccompanied by any physical property restriction--provides a slender reed upon which to rest a takings claim." 444 U.S. at 66.

The Court has found there is no taking even in situations where a governmental regulation has caused substantial harm to property interests so long as the regulation serves a substantial public interest. E.g., United States v. Central Eureka Mining Company, 357 U.S. 155 (1958). In that case, the federal government ordered the closing of gold mines to assist the war effort by encouraging the reallocation of scarce manpower and equipment resources from unessential to essential mining operations. In finding that this action did not constitute a taking, the Court emphasized that the order was "a well-considered decision to accomplish a proper result." Id. at 167.[10/] The Court has been especially

10/ See also Goldblatt v. Hemstead 369 U.S. 590 (1962) (city ordinance that bans excavation below water table is not a taking even though it effectively prohibits continued operation of long-established sand and gravel mining business); Atchison, T. S.F. R. Co. v. Public Utilities Commission, 346 U.S. 346 (1953) (railroad need not be compensated for requirement that it share cost of constructing railroad grade improvement); U.S. v. Caltex, 344 U.S. 149 (1952) (deliberate destruction by the federal government of oil facilities in time of war not a taking); Miller v. Schoene, 276 U.S. 272 (1928) (state order to remove ornamental cedar trees that endanger apple orchards not a taking).

reluctant to find a taking when the interference "arises from some public program adjusting the benefits and burdens of economic life to promote the common good" and "can[not] be characterized as a physical invasion by the government."[11/]

The Natural Gas Consumer Regulatory Reform Amendments would affect natural gas contracts and the industry generally in order to remedy perceived defects in existing legislation and thereby protect consumers. None of its provisions would compel any physical surrender of property to the government for its use. It is clear, therefore, that it would not directly appropriate or take private property for public use without just compensation. In fact, it would leave individuals free to dispose of their natural gas and to carry on their businesses in any manner consistent with the law and even would permit the readoption of the affected contractual provisions.

11/ Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124 (1978) (historical preservation law that prohibited construction of building above Grand Central Station upheld). See generally Hodel v. Virginia Surface Mining and Reclamation Association, 452 U.S. 204, 295-296, (1981) (law regulating the conditions under which surface mining may be conducted upheld); Andrus v. Allard, supra, at 65-66 (law that bars the sale of artifacts containing eagle feathers is not a taking because it does not compel the surrender of the property and there is no physical invasion or restraint upon the property); United States v. Central Eureka Mining Co., supra (order that prohibited operation of gold mines not a taking since the Government did not occupy, use or take physical possession of the gold mines or the equipment connected with them); Omnia Commercial Co. v. U.S., 261 U.S. 502 (1923) (requisition of steel company's production not a taking of a contractual right to purchase such production). Cf. United States v. Causley, 328 U.S. 256, 262-263, (1946) (direct overflights that destroyed value of land as chicken farm constituted a taking since the government had not "merely destroyed property [but was] using part of it for the flight of its planes").

E. The Tenth Amendment

The Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In Oklahoma v. F.E.R.C., 661 F.2d 832 (10th Cir. 1981), cert. den. 102 S.C. 2902 (1982), the court of appeals upheld the NGPA against a challenge that it violated the Tenth Amendment. Since the NGPA abrogated or modified many contractual provisions for the sale of natural gas, even when that gas was consumed in the state in which it was produced, the similar provisions of the Natural Gas Consumer Regulatory Reform Amendment would also not violate the Tenth Amendment. This result is consistent with the decisions of the Supreme Court holding that regulating natural gas and electricity sold for resale in interstate commerce lies beyond the powers of the states[12/] and within Congress' power under the Commerce Clause.[13/]

Despite many requests that it do so, the Court consistently has refused to use the Tenth Amendment as a basis to invalidate federal regulation of private economic activities.[14/] The Court made clear in Hodel v. Virginia Surface Mining and

12/ E.g., Public Utilities Commission v. Attleboro Steam & Electric Co., 273 U.S. 83 (1927); Missouri ex rel. Barrett v. Kansas Natural Gas Co., 265 U.S. 298 (1924).

13/ F.P.C. v. Natural Gas Pipeline Co., supra.

14/ In National League of Cities v. Usery, 426 U.S. 833 (1976), the Supreme Court did invalidate a federal regulation on the basis of the Tenth Amendment. However, this case should be read very narrowly since it involved wages paid by the states to their employees.

Reclamation Association, supra, that Congress does not invade areas reserved to the states by the Tenth Amendment simply because it exercises its authority under the Commerce Clause in a manner that displaces the states' exercise of their police powers. In order for a federal law to invade powers reserved to the states three conditions must be met. First, there must be a showing that the statute regulates the "States as States." Second, the Federal regulation must address matters that are indisputably "attributes of state sovereignty." And third, it must be apparent that the States' compliance with the Federal law would directly impair their ability "to structure integral operations in areas of traditional governmental functions." 452 U.S. at 287-88.

Under this test congressional action to regulate natural gas contracts could not be held to infringe on areas reserved to the states by the Tenth Amendment. The proposed legislation would regulate the natural gas industry, not the states in their sovereign capacity. The states would remain free to regulate those aspects of the industry, such as production of gas and sale of gas to ultimate consumers, that are subject to the states' police powers.[15/]

15/ Even states themselves may become subject to federal regulation under the Commerce Clause when they engage in economic activities of a proprietary nature, similar to those of private parties. See Public Service Co. v. FERC, 587 F.2d 716 (5th Cir. 1979).

F. Prior Regulation of Natural Gas Contracts

It is well settled that Congress can exercise its power under the Commerce Clause to regulate the natural gas industry,[16/] including the production of gas for sale in the interstate[17/] and intrastate[18/] markets. On several occasions Congress has exercised this power to affect natural gas contracts directly.[19/] In Section 5(a) of the NGA Congress authorized the Commission to determine whether a "contract... is unjust, unreasonable, unduly discriminatory, or preferential...," and prescribe

16/ In F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 575, 582 (1942), the Supreme Court unanimously upheld the constitutionality of the NGA and approved a Commission order finding existing rates for sale of natural gas by two pipelines unjust, unreasonable and excessive under §§5(a) and 13 of the NGA and ordering a reduction of rates. In so doing, the Court stated:

> The argument that the provisions of the statute applied in this case are unconstitutional on their face is without merit. The sale of natural gas originating in one State and its transportation and delivery to distributors in any other State constitutes interstate commerce, which is subject to regulation by Congress.

17/ In Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954), the Supreme Court directed the Commission to establish just and reasonable rates for sales in interstate commerce of natural gas for resale by all producers including independent producers that were not affilated with a pipeline.

18/ The NGPA imposed price controls on natural gas produced for sale in the intrastate market. The constitutionality of the NGPA as a whole was upheld in Oklahoma v. F.E.R.C., 494 F. Supp. 636 (W.D. Okla. 1980), aff'd 661 F.2d 832 (10th Cir. 1981), cert. den. 102 S.C. 2902 (1982).

19/ The Commerce Clause is the basis for the establishment of maximum and minimum prices under the NGA and the NGPA. Price controls may override inconsistent price terms in existing contracts. E.g., Permian Basin Area Rate Case, 390 U.S. 747, 821-822 (1968).

the "contract to be thereafter observed...." Pursuant to this section the Commission adopted a regulation that, in effect, abrogated all indefinite price escalators except for clauses which tied the price to the applicable just and reasonable area ceiling rate. The Supreme Court affirmed this action, holding that Section 5(a) gives "the Commission... plenary authority to limit or to prescribe contractual arrangements that contravene the relevant public interests."[20/]

In the NGPA, Congress acted directly to limit the application of private contractual provisions. Section 105(b)(3)(A)[21/] caps the price that can be paid pursuant to indefinite price

20/ 390 U.S. at 784. See also F.P.C. v. Texaco, 377 U.S. 33 (1964); Pure Oil Co., 25 F.P.C. 383 (1961), aff'd, Pure Oil Co. v. F.P.C., 299 F.2d 370 (7th Cir. 1962); 18 C.F.R. §154.93.

21/ Section 105(b)(3)(A) provides:

> (A) IN GENERAL.--Effective January 1985, and each month thereafter, in the case of any first sale of natural gas, which is sold at a price established under any indefinite price escalator clause of any existing contract or successor to an existing contract and for which the contract price on December 31, 1984, is higher than $1.00 per million Btu's, the maximum lawful price under this section for any such natural gas delivered during any month shall be the higher of-
>
> (i) the maximum lawful price, per million Btu's, computed under paragraph (2)(B); or
>
> (ii)(I) in the case of January 1985, the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for such month; and
>
> (II) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this clause for the immediately preceding month multiplied by the monthly equivalent of the sum of a factor equal to the annual inflation adjustment factor applicable for such month plus .03.

escalator clauses in intrastate contracts. Section 313[22/] shields indefinite price escalator clauses from the effect of certain natural gas prices. Section 314 declared unenforceable anti-commingling clauses that often are included in intrastate contracts.[23/]

22/ Section 313 provides:

> (a) HIGH-COST NATURAL GAS.- No price paid in any first sale of high-cost natural gas (as defined in section 107(c)) may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)) with respect to any first sale of any natural gas other than high-cost natural gas (gas defined in section 107(c)).
>
> (b) OTHER TRANSACTIONS.- No price paid-
>
> (1) in any sale authorized under section 302(a), or
>
> (2) pursuant to any order issued under section 303(b), (c), (d), or (g),
>
> may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)).

23/ Section 314(a) provides:

> (a) GENERAL RULE.- Any provision of any contract for the first sale of natural gas is hereby declared against public policy and unenforceable with respect to any natural gas covered by this Act if such provision-
>
> (1) prohibits the commingling of natural gas subject to such contract with natural gas subject to the jurisdiction of the Commission under the provisions of the Natural Gas Act;
>
> (2) prohibits the sale of any natural gas subject to such contract to, or transportation of any such natural gas by, any person subject to the jurisdiction of the Commission under the Natural Gas Act, or otherwise prohibits the sale or transportation in interstate commerce (within the meaning of the Natural Gas Act) of natural gas subject to such contract; or
>
> (3) terminates, or grants any party the option to terminate, any obligation under any such contract as a result of such commingling, sale, or transportation.

IV. Conclusion

Congress' power under the Commerce Clause to regulate the natural gas industry is extremely broad. It has used this power to modify and even abrogate provisions in contracts for the sale of natural gas. Any challenge to further regulation of natural gas contracts would not succeed since no express constitutional limitation would be violated. There would be no violation of substantive due process or equal protection since the Congress clearly would have a rational basis for its action, including any classification of natural gas contracts it might adopt. There would be no taking since the congressional action would only adjust economic relationships and would not involve the physical surrender of property to the government. There would be no invasion of the areas preserved to the states by the Tenth Amendment since these areas are very narrow and do not extend to the regulation of commodities sold in interstate commerce.

XII. Additional Views

Additional Views of Senator McClure

The renowned French novelist of the 19th Century, Honore' de Balzac, once opined that, "All human power is a compound of time and patience."

The Natural Gas Policy Act Amendments of 1983 would satisfy certainly the test of "a compound of time and patience" for the Committee on Energy and Natural Resources. The Committee devoted almost a calendar month to extensive hearings on the Administration's comprehensive natural gas legislative proposal, S. 615, and related bills. Every witness who requested formally to testify was provided an opportunity to do so. Thereafter the Committee considered actively S. 615 and various alternatives in 30 separate business meetings throughout the months of April, May, June and July. Ultimately, the Committee ordered reported without recommendation the original bill which is the subject of this report by a record vote of 11 ayes—9 nays. Time will only tell whether this test of time and patience will yield a compound worthy of "all human power" in this country.

At the outset of these views, I want to salute my colleagues on the Committee on both sides of the aisle, both those who supported reporting and those who opposed reporting, who contributed their time and great patience to the Committee's thorough consideration of the numerous issues involved in the comprehensive legislation and their support during our search for a bi-partisan, compromise solution to the natural gas question. I especially want to express my appreciation to my co-sponsors of the final compromise proposal, Senator Johnston and Senator Ford, for their assistance and cooperation in fashioning a proposal which ultimately obtained the support of a majority of the Committee to send to the full Senate. I also wish to commend Senator Nickles, Senator Hecht, Senator Warner, Senator Melcher, Senator Bradley and other Members of the Committee for their diligence in participaing in the long and arduous consideration of the many complex natural gas issues before us.

I also wish to state unequivocally that the bill presented by the Committee on Energy and Natural Resources deserves the early and most serious and thorough consideration by the Senate. There are several critical reasons for such a conclusion. The natural gas markets of this nation today are in near chaos, with the combination of excess supplies, rapidly increasing consumer prices, fuel switching to oil products, financial distress of producers *and* pipelines, extensive litigation over contract obligations, and the shut-in of cheaper gas supplies. The Senate, during the December 1982,

lame duck session, rejected correctly two separate proposals for so-called "quick fix" legislation with price freezes and rollbacks, favoring instead to adopt a Senate Resolution and defer further action pending the opportunity for the Committee to consider comprehensive natural gas legislation, as discussed in the legislative history section of this report. The original bill reported by the Committee constitutes a fully comprehensive proposal to remedy our difficulties in the natural gas markets from the wellhead in the producing field to the burner tip in the residential and industrial consumer unit.

The original bill is a finely tuned compromise which carefully balances the critical interests of interested parties from the wellhead to the burner tip. It ensures immediate and substantial price relief for residential consumers in the face of otherwise staggering price increases under existing law. The Department of Energy has estimated that the bill will provide $11 billion of economic benefits over the next several years by comparison to existing law. Both the Administration and the American Gas Association have provided the Committee with analyses concluding that average consumer prices will be lower under the bill through at least 1987 than under existing law.

The bill would provide immediate relief from so-called "take-or-pay" contract provisions, which could impose billions of dollars of financial obligations on pipelines, and ultimately their customers, during this period of excess supply. The bill also contains a carefully phased price adjustment mechanism, which will bring most natural gas prices over the next four years to market clearing levels and provide a transition to deregulation of wellhead price controls and the removal of many non-price regulations imposed by existing law. Another major feature of the bill is its contract carriage provision, which would provide significantly increased market flexibility between purchasers and sellers of natural gas. The result would be more efficient distribution of our nation's gas supplies, and increased availability of lower-priced gas.

The provisions of the bill are carefully formulated to assure adequate supplies of natural gas during and after the transition period. Prohibitions in current law on the use of natural gas are removed in order to provide increased opportunities for producers' sales of the current surplus of natural gas, and a more competitive marketplace. The bill will provide a meaningful and predictable incentive for significantly increased production from old gas fields, which otherwise would be rendered uneconomic by the existing ceilings on wellhead prices. This would ensure the largest additional source of low cost gas for the American consumer. The bill also would remove the current subsidies under the Natural Gas Policy Act for extremely high-priced gas and would provide an equitable transition mechanism that would gradually reduce the prices of these supplies down to market clearing levels. Perhaps as important in many respects, the bill will provide an affirmative incentive for the most direct and effective remedy to the current market chaos—renegotiation of existing contracts. The renegotiation process would protect best the dual interests of American consumers in immediate and lasting price relief and assured long term supplies.

The Committee also has adopted separately an amendment for consideration on the Senate Floor which will require that imported natural gas be subject to the most important price limiting provisions of the bill. The amendment would be offered in the event that current diplomatic discussions and negotiations are unsuccessful in providing near-term and meaningful price relief for those American consumers who are now partially dependent on imported gas, as in my own State of Idaho.

The Department of Energy has provided the Committee with an analysis concluding that the aggregation of all these elements of the bill would yield *$23 billion in total consumer benefits* and *long-term price relief significantly greater than what would occur under existing law through 1995.*

Last March, at the outset of our hearings on this most complex and difficult of issues, I attempted to establish a standard of effectiveness for our efforts. I stated:

We must not lose sight of the fact that the fundamental objective of any natural gas bill must be to achieve a balance between the need to limit consumer gas prices and the equally important need to ensure that gas shortages do not occur later in this decade. We must achieve that balance. Above all, we must avoid enacting legislation that does nothing more than compel gas consumers, in the long run, simply to exchange one form of economic hardship for another.

During our hearings, Federal Energy Regulatory Chairman Mike Butler added a most statesman-like comment on the nature of our challenge in developing comprehensive natural gas legislation. He observed:

> The problem that we have before us is not a Republican problem. It is not a Democratic problem. It is not a liberal problem. It is not a conservative problem. It is an American problem, and it deserves an American answer. Partisanship can play no role if we are to find a solution for the long run.

I believe it is noteworthy that this bill has extensive support as it proceeds to the Senate Floor. The list of supporters of the Committee's action in reporting the bill includes the following organizations, as well as many individual businesses and industrial corporations:

Interstate Natural Gas Association of America; Chemical Manufacturers Association; United States Chamber of Commerce; American Farm Bureau Federation; American Textile Manufacturers Institute; Rubber Manufacturers Association; Highway Users Federation; National Automobile Manufacturers; Society of the Plastics Institute; Independent Petroleum Association of America; Natural Gas Supply Association.

Importantly, this compromise proposal also has the full support of the Reagan Administration, as indicated in the text of Secretary of Energy Donald Paul Hodel's letter of July 18, 1983.

> DEAR MR. CHAIRMAN: You have asked for our assessment of natural gas legislation as it currently is pending before the Committee on Energy and Natural Resources.

Since I first testified on the natural gas issue, the Committee, under the leadership of you and Senator Johnston, has worked long and hard to reach a compromise on legislation reportable to the full Senate. Your June 26 bill, as subsequently amended, is fair, comprehensive legislation, and moves us toward the goal of providing an adequate supply of natural gas at reasonable prices.

In my testimony, I indicated there are three essential elements which will be needed in any natural gas legislation. These are:

1. protection of the American gas consumer against unreasonable price increases resulting from the *status quo,* or from new legislative action,

2. adjustment of contracts entered into in a regulatory environment which has contributed substantially to the present intolerable situation in which gas costs escalate even though gas is in abundant supply, and

3. gas deregulation by a date certain, to capture the benefits of competition in the marketplace, so that the current distorted conditions will not recur.

The current Committee bill contains a variety of provisions which are intended to accommodate these objectives. It is comprehensive legislation that looks to the market to solve problems both in the short term and the long. As such, it provides a basis for the assurance that gas consumers will have an adequate supply of gas at a fair price for years to come and includes the necessary provisions to insure the protection of consumers during the phased transition to deregulation.

Although, in our view, a number of improvements still could be made to the Committee's present bill, I am more interested in facilitating the legislative process. Thus, we will not advocate additional changes in Committee even if these amendments would move the Committee's bill closer to the Administration's original bill.

Committee members of both parties, representing both consuming and producing states, have labored hard to reach this compromise. Virtually every imaginable problem has been considered and much success already has been achieved. Accordingly, we support the effort to complete action on the bill and to report legislation to the floor.

Sincerely,

DONALD PAUL HODEL.

In conclusion, I believe it is imperative that the Senate give this original bill full consideration at an early time. The chaos in the market and the ever rising prices as we approach the winter heating season in the next several months will only expose our consumers and producers to additional hardships and penalties under existing law. The Senate simply must act, and act soon, to prevent yet another winter of agony for those of our citizens who are least capable of bearing the financial burden of higher gas prices. I urge

each of my fellow Senators to review this bill thoughtfully and thoroughly in preparation for early Senate action.

Finally, I again thank all my colleagues on the Committee for their time, patience and understanding in contributing to the "compound" which equates to "all human power" in the century-old words of Balzac.

JAMES A. MCCLURE.

Additional Views of Senator Hatfield

I have reluctantly voted to move a bill I oppose out of the Committee to avoid a stalemate on an issue of extreme importance to natural gas consumers. My action was based upon my belief that the full Senate will reject the Committee bill and instead will agree to legislation which addresses and resolves the immediate issues that face the natural gas industry while also adequately protecting the interests of consumers. The present natural gas market is not responsive to the forces of supply and demand. In order to reduce the price of gas to consumers, we must remove the artificial impediments to the operation of a free market for natural gas from the wellhead to the burnertip, but we must do so in a way that minimizes the cost impacts of such action on consumers.

My principal disagreement with the Committee bill rests on my opposition to the decontrol of old gas, gas that was discovered before 1977. Old gas decontrol will dramatically increase costs to the consumer, and result in little or no additional gas discoveries.

The economic consequences and consumer price impacts of the deregulation of old gas are unacceptably high. The cumulative consumer cost of old gas decontrol for the years 1984 through 1990 is estimated to be approximately $40 billion.

This $40 billion is nothing more than an unjustified windfall for the major natural gas producers. The wells that produce old gas were drilled years ago, and the investment in this drilling was premised upon receipt of a wellhead price of approximately 26 cents for wells drilled before 1974, 42 cents for wells drilled between 1974 and 1976 and $1.42 for wells drilled in 1976. Little, if any, additional investment in these wells is required to maintain production. Since these wells are economic at the existing ceiling prices, which increase automatically with inflation, there is no justification for increasing the price of this gas now. In fact, in 1976 the Federal Power Commission considered and rejected permitting old gas to receive new gas prices because "the Commission . . . has a responsibility to minimize severe and harmful economic dislocation due to increased rates." This body has no less of a responsibility.

Old gas deregulation provides no incentives for producers to use their windfall profits to explore for and develop new resources. Instead, a producers' only incentive is to concentrate the majority of its resources to developmental drilling, rather than the more expensive exploratory drilling. Thus, no significant additions to our nation's gas reserves will flow from old gas decontrol.

In addition to the disastrous consequences of old gas decontrol, the Committee bill does not solve the immediate problem at hand—how to bring stability and market responsiveness to natural gas prices. The problem lies in the contracts that link gas producers to pipeline transporters and pipelines transporters to local distribution companies and direct industrial users. This complex con-

tract structure has made it difficult for price signals to be sent from the ultimate consumer to the producer. Price increases along this path from producers to pipelines and from pipelines to local distribution companies have occurred regardless of the willingness or the ability of the consumers at the end of the distribution chain to pay the resulting price. For example, pipelines faced with the severe gas curtailments of the 1970's constantly agreed to pay producers the highest lawful ceiling prices for needed supplies. Now, however, when oil prices are falling and when the prices of gas to industrial customers gets too high, these users switch to oil putting more price pressure on the remaining gas customers, particularly the residential consumers. This explains why gas prices continue to increase when demand is falling—there is no way for the price signals at the customer level to get back to the producer. The producer continues to collect higher and higher prices, more and more industrial customers switch to oil and the remaining residential and high priority commercial gas customers are left to pay the increased share of the escalating gas costs and the fixed costs of transmission and distribution.

The Committee bill's attempt to make existing gas sales contracts between producers and pipelines more responsive to the marketplace is flawed. The provision intended to ameliorate take-or-pay requirements does not go far enough. Take-or-pay requirements must be reduced further. A reduction of take-or-pay requirements beyond what S. 615 allows will provide pipelines with the contractual flexibility to purchase the most inexpensive supplies already under contract first, thereby insuring that gas consumers receive service at the lowest reasonable cost.

I believe the concerns raised herein are capable of expeditious legislative resolution. Unfortunately, any natural gas legislation carries with it the all too frequently bitter baggage of past natural gas struggles won or lost. Few issues in past years have aroused more passionate debate or views more firmly held. It is my hope that in this time of plentiful supply that the atmosphere will be more conducive to reaching solutions to this difficult and arcane area that will work to the benefit of all economic segment and geographic areas of the country. I pledge my efforts to the pursuit of such solutions.

MARK O. HATFIELD.

Additional Views of Senator Domenici

As one who participated in the long debate on the Natural Gas Policy Act of 1978 (NGPA) I believe it is fair to say that my assessment of the natural gas legislation reported by the Senate Energy and Natural Resources Committee is one which is reached with full appreciation of the political and practical difficulties surrounding this issue. In view of these difficulties it would only be natural to expect the legislation approved by the Committee would be only an incremental improvement over the Natural Gas Policy Act. Unfortunately, the legislation reported by the Committee may be a rather large step backward.

In December of 1982 we began the review of the natural gas market which culminated in this legislation. The impetus for that review was the fact that natural gas prices were increasing at a time when there was a glut of natural gas in the market. Obviously the "marketplace" was not working, or at least it was not doing so quickly enough. At that time some very nearsighted approaches to "fixing" the problem were proposed. In the interim the marketplace has begun to work on natural gas prices. In June 1983 the Producer Price Index according to the Bureau of Labor Statistics indicated that wellhead prices were 1.7 percent below that of December 1982.

Still more can and should be done to assure that buyers and sellers of natural gas can respond to supply and demand factors in a manner which provides consumers with proper prices for this energy resource. There appears to be a consensus that three major initiatives should be undertaken to assist the consumer in this regard. First, a more adequate standard for purchasing practices for natural gas pipelines should be provided in the statutory authority of the Federal Energy Regulatory Commission (FERC). The standard that most observers would agree would be useful is that of "prudence" in purchasing practices. Unfortunately, the legislation reported by the Committee has bound the hands of the FERC by defining prudent purchases as being ones that are at a cost of 110 percent of the national average price over the past six months. This standard would be inflexible, thus suffering from the major criticism leveled against the Natural Gas Policy Act. Furthermore, this standard would be removed in a little less than 4 years after enactment of the legislation. Second, the legislative reduction in contractual take-or-pay obligations, which are frequently about 90 percent, has been cited as a potential area for consumer relief. In Committee an amendment I offered to lower the volume of deliverability to 50 percent over three years failed. Instead the Committee settled on an arbitrary formula of 50 percent in the first year after enactment with 60 percent and 70 percent in the following two years. The third point of consensus appears to be that the natural gas pipeline system ought to be made more flexible to provide for

the transportation of natural gas directly to purchasers of that gas on a fee basis. This "contract carriage" would permit end users to shop around for the cheapest gas available rather than be captive to the pipeline company supply presently available to them. The provision on contract carriage in this legislation is an excellent effort to provide this kind of service but, I believe it is too complicated and the so-called protections provided pipelines and local distribution companies will only serve to frustrate the purposes of this provision and its consumer benefits.

I am particularly concerned about the precedent this legislation would set through the wholesale abrogation of natural gas supply contracts. The Committee seems to believe that natural gas "deregulation" means the abrogation of all natural gas contracts. I have always believed it meant the removal of Federal control of wellhead prices. Any price increases which would come about would be only those permitted by contracts entered into by the gas producer and the purchaser. The justification for such an unprecedented action in both the scope of its effect on consumer prices and turmoil in the financial community appears to be a need to "scramble" the natural gas market and create a new "free" market. If this legislation is intended to provide a transition to a free market this certainly is not an easy one. If such a mechanism is so helpful we ought to consider legislation which would abrogate all existing mortgages for homeowners. All of us would certainly like a different mortgage rate than the one we presently have. Politically it might be tempting to do, but practically the results would be disastrous. The abrogation of contracts contemplated in this legislation may very well be disastrous for the orderly operation of the natural gas industry.

The legislation reported by the Committee takes a clear step backward in the act of reregulating those natural gas pricing categories which had been moving toward deregulation under the Natural Gas Policy Act of 1978 or which had been deregulated under that legislation. This reregulation will remove the incentives which were so effective in producing new supplies of natural gas. In 1981, subsequent to the passage of the NGPA, we saw additions to reserves of natural gas exceed production for the first time in over ten years. The long-term best interests of consumers will not be served by reducing the incentives for the production of natural gas from new fields.

Much of the criticism that has been aimed at the NGPA is the inflexibility that the legislation created in the regulation of natural gas prices. Certainly the legislation before us goes beyond even the complex and, in some cases, incorrect regulatory structure provided under the Natural Gas Policy Act. If we are to expect natural gas prices to respond to marketplace forces, then we should not ask the Senate to consider the passage of legislation which only provides more regulation for natural gas prices.

PETE V. DOMENICI.

Additional Views of Senator Wallop

In this legislation, the Energy Committee has compromised and complicated one of the most fundamental concepts this nation was built upon. The very idea of the Congress upsetting contracts like so many apple carts is one which must be entertained with only the gravest of reservations. Yet, in this bill we are reporting, the sanctity of the contract has been mauled and broken in the hope of bringing competition in natural gas to the market place. It is, by any account, a contradiction of extraordinary proportion. It is best summed up in the term "compromise." This legislation is that, too much so in my opinion, but as an optimistic young lad standing in a stall throwing handful after handful of horse manure over his shoulder once said, "there must be pony here somewhere." I don't know if there is a pony here, but in the coming months I'm going to be throwing right next to him.

I do not believe this is a particularly good piece of legislation. It carries with it the baggage characteristic of any compromise. With an issue which is dealt with more on an emotional basis than an intellectual one, the chaos and complication of compromise is exaggerated that much more. The fact that this bill is being reported out of Committee "without recommendation" is evidence itself that the conflicts we have dealt with over the course of more than 30 markup sessions have been resolved to no one's general satisfaction. For whatever reasons individual members of the Committee had for supporting or not supporting the submission of this legislation to the full Senate, it was time to move the legislation forward. There are many unanswered questions on the impacts of this legislation. Questions which must be answered before I will support the bill when it is considered by the full Senate.

The most overused cliché in this whole process is "what I am seeking to achieve is natural gas legislation which will provide consumers with an adequate supply of natural gas at a reasonable price." With the NGPA we provided the consumer with abundant supplies of natural gas, but at prices the free market would never support. Indeed, as available supplies increased, the price consumers were asked to pay increased as well. Those rising prices also had the effect of driving industrial consumers from natural gas to alternative fuels. That, in turn, caused increases in consumer prices because the industrial consumer was no longer there to share in the fixed costs of the distribution system. And so the spiral goes. This winter, from across the country we heard the cry "do something about our natural gas prices." In that attempt, the thing we have discovered is that everyone has their own villain who they claim caused this mess in the first place: Many pipelines entered into wildly imprudent contracts calling for high takes of gas at high prices; other pipelines have entered into self-serving contracts with their own producer affiliates; producers were asking

outrageous prices for their gas. But point your finger where you will, the bird is coming home to roost in the laps of the Congress. While the NGPA has looked good to me at times during the course of the past several months, that compromise of five years ago has led us to the compromise we have reported today. But, the cliche' returns. Have we provided consumers with an adequate supply of natural gas at a reasonable price? To the extent we have allowed the market to operate, I believe the answer is yes.

While there is no consensus opinion as to the merits, or lack thereof, of this legislation, there are some diamonds in the rough here. One of the most fundamental accomplishments of this legislation is that by its very complicated nature we have provided incentives and a very real impetus for parties to existing natural gas contracts to renegotiate those contracts to reflect market conditions. With successful renegotiation, those contracts are basically freed from the complications of this bill and further government regulation. Indeed, it is the free market, where I believe that the fullest and best protection for consumers, producers, pipelines, and the country as a whole is to be found. And even with the regulatory morass we have created in addition to that already found with the NGPA, there is a foreseeable horizon out there when all natural gas will be decontrolled. The question to be answered by all involved is whether the short-term pain involved is worth a free market in natural gas at some future date. In the context of this legislation, I don't know how I answer that question right now, but I do believe this is an opportunity for us all to find an answer to what is the most fundamental question in the natural gas debate.

One of my biggest concerns in this legislation is that the short-term pain is not evenly shared. We have, in my opinion, asked the independent producer, the producer who is largely responsible for finding the reserves we will use tomorrow and the day after, to shoulder the brunt of our past regulatory shortcomings. Under the NGPA we created incentives for the exploration of new gas. Our independents have used those incentives brilliantly to provide us with a present abundance of new gas. Yet, in this bill we have asked those independents to sacrifice to a much greater extent than any other affected party. We will allow pipelines to break contracts with producers, but we have given that same pipeline great control over where and to whom that producer can sell his gas. We will allow pipelines to greatly reduce the amounts of gas that are required to be taken under a contract, and by so doing will significantly reduce producer cash flow. In addition, while we would allow the producer to market the gas that will not be taken in any one particular year, he cannot market any of the underlying reserves. Those reserves are held captive to the pipeline that had originally contracted for the gas. The possible financial ramifications are more than apparent. Those provisions, in my opinion, are neither fair nor responsible. Every time we limit the ability of the free market to work, we have created yet another reason for the Congress to regulate, to regulate where regulation has failed.

In the final analysis I cannot characterize this as a good bill, but I am not yet ready to call it a bad bill. As I see it, there are some strong arguments in favor of the bill, and many good arguments against it. By reporting this muddled compromise out of the Com-

mittee we have given everyone a chance to examine, question, and digest its provisions. If we are to offer consumers, industrial or domestic, the best long-term solution in terms of price and supply of natural gas, this legislation is where the majority of the Committee believed we should start, and it is worth the effort to continue to forge our way to a free market which contains incentives to explore and produce.

MALCOLM WALLOP.

Additional Views of Senator Warner

The search to bring order to the natural gas market has been a long and difficult one. The legislation, which has been reported by the Senate Committee on Energy and Natural Resources, is far from perfect, but it is a starting point of making gas prices sensitive to the burner tip market.

My vote to report the Natural Gas Policy Act Amendments of 1983 from Committee was not an endorsement of the bill but was a vote to keep the legislative process moving so that the Senate can be allowed to work its will on natural gas legislation. I am reserving judgment on the overall merits of the bill and whether it will have my support until natural gas legislation is debated on the Senate Floor.

Although I have serious reservations about certain provisions of the bill as reported, I am firmly convinced that we cannot tolerate a replay of last winter's rising gas prices during a gas surplus. Yet, this is precisely what may happen if Congress does not change existing law.

The Energy Information Administration projects that natural gas consumption in 1983 will be 17.2 trillion cubic feet, 3.5 percent lower than the 1982 level, and the lowest annual gas consumption since 1966. Domestic natural gas production is projected to decline by 5 percent to 16.7 tcf in 1983. Yet the average price to residential users in 1983 is expected to be 16 percent higher than a year ago!

Another major impetus for changes in natural gas law is the alarming extent to which industrial users are switching off gas to other fuels, particularly oil. This means the remaining residential and high priority commercial gas customers are left to pay an increased share of the fixed costs of gas transmission and distribution.

Federal controls on wellhead natural gas prices are counterproductive. Ultimately, a "free market" at the wellhead is a better manager of resources than the federal government. However, the federal government has regulated wellhead prices for almost three decades, and has regulated the interstate transportation and sale for resale aspects of the industry for more than four decades. States have regulated, for even longer periods, the retail sale and utility service segment of the industry. Given this intensive regulatory history, and the strong public interest at stake, the transition to decontrol of wellhead prices must be gradual.

For this reason, I supported an amendment to extend the ramp-up of old gas prices to 72 months, rather than the 36-month ramp-up provided in the legislation. A more gradual ramp-up of old gas prices would modify price impacts on consumers and allow the natural gas industry a more reasonable time in which to adjust to free market conditions.

The bill does not put enough demands on producers to augment existing old gas supplies as a condition of increasing prices. Consequently, I am concerned that there will not be a sufficient increase in old gas supplies under the committee proposal to justify the potential price increases to consumers.

The bill, as reported, includes my proposal to reduce take-or-pay requirements to 50% the first year, 60% the second, and 70% the third. This should lower prices to consumers because pipelines can reduce their purchases of high cost gas at times of surplus supply.

Columbia Gas, one of two major Virginia pipelines, has estimated that a 50% take-or-pay reduction would lower the wellhead price of gas to its customers by 22%, or 92¢ per thousand cubic feet. Columbia's average wellhead price today is $4.17. Columbia estimates this will decrease to $3.25 because of my proposal to limit take-or-pay to 50%.

Phasing down higher-priced new gas over one year should also mean lower prices to consumers.

Another key to minimizing the impact on consumers, and guaranteeing that the gas market is more responsive to retail market conditions, is to make pipelines accountable for their gas acquisition practices and purchased gas costs. The way to achieve this is removal of current law's "guaranteed" pipeline passthrough of purchased gas costs and the imposition of a meaningful prudency test. Unfortunately, the committee bill does not go far enough in meeting these goals.

A major problem is that pipeline gas purchases at 110% of the free market price indicator are deemed prudent. I am concerned that the rigid level of 110% is not only too high, but will also serve as a guaranteed floor for gas purchases instead of a ceiling.

Finally, I continue to have concerns about the precedent this legislation could set for federal abrogation of contracts in other sectors of our economy and also the burdens contract abrogation will impose on some in the natural gas industry.

I am hopeful this legislation will soon be scheduled for Senate floor action so that, before the next winter heating season, Congress will have passed legislation that assures adequate supplies of natural gas to both residential and industrial customers at reasonable prices.

JOHN W. WARNER.

Additional View of Senator Nickles

Natural Gas is the only major resource which is controlled by the federal government at the point of production. There are currently twenty-eight federal wellhead price categories which range from approximately 50¢ mcf to $9.00 mcf. This is absurb.

This bill is a step in the right direction from current law in that virtually all federal wellhead regulation is eliminated in less than four years. However, much of the bill, during the transitional period from today's regulated market to a free market, consists of new regulation or re-regulation, neither of which is necessary or beneficial.

Total federal de-control of the natural gas industry at the wellhead is essential to insure that consumers will have long-term supply of natural gas at reasonable prices. I believe immediate decontrol without abrogating contracts would result in immediate price relief and promote new exploration. The market's current surplus, if allowed to operate, would bring that price relief. And without new exploration, today's surplus will diminish in the wink of an eye.

Although there are numerous and serious drawbacks in this bill, I must commend the Administration and my colleagues for some very positive provisions which have been included. I am very encouraged that all new and all renegotiated contracts for natural gas would be immediately de-regulated when those contracts are signed.

The bill would also repeal the Fuel Use Act, incremental pricing and current Congressional and Presidential authority to extend NGPA controls. All of these are extremely important and long overdue steps. Additionally, I support the pipeline contract carriage concept in the bill, whereby competition would be enhanced and more gas would be moving. And of course the bill's strongest selling point is its eventual repeal of remaining NGA and NGPA price and non-price controls, although I feel the repeal is delayed too long with a burdensome transitional period of regulation.

The most serious problem that I have with the bill is that it allows for the total unilateral abrogation of individual contract. I believe in the sanctity of contracts—one's word is one's word and people in the business world should be and need to be able to depend on a contract. There should not be a cloud of fear hovering over the contracts that the government might come in and say that a contract can be cancelled.

Just because Congress has done this before and apparently has some authority to do so, does not justify us doing so now. This is a dangerous precedent which should be stopped and not continued. The problems of our natural gas industry, as serious as they are, can be resolved without the drastic false "remedy" of contract abrogation.

De-control does not mean one federal price for all gas, and neither does it mean that contracts must be torn up. I realize that contracts for gas have been negotiated and signed within the framework of a regulated market. The result has been some unreasonable and harmful contracts that cannot respond to a changing market. There thus may be a case for some mandated contract alteration, such as take or pay relief or the repeal of most favored nation clauses, but a case cannot be made for the government to allow the tearing up of all contracts. I note that the right of first refusal and right of first offer provisions, with which I am not entirely comfortable, would not be necessary if there were no contract termination or marketing out in the bill.

In addition to contract abrogation, I struggle with other elements in this bill. I question the wisdom of the ramping mechanism. Ramping gas to one price is not necessary and may prove costly to consumers. The resulting rollback in price and in volume may actually bankrupt many independent producers. Independent producers drill 88.5 percent of all new wells and 90 percent of the exploratory wells, which are in search of new domestic oil and natural gas reserves.

The new prudency test may prove to be a backdoor method of wellhead regulation and may serve as a disincentive to drilling. The exclusion of direct sales contracts and contracts in Alaska from the ramping market-out provisions is inequitable. I do not like those provisions, but if they are going to be in any final bill, then they should apply to everyone. Other negatives in this bill include the limitation on off-system sales by interstate pipelines and the fact that some expiring contracts, including warranty contracts, are trapped upon expiration in the phasing mechanism.

Therefore, I intend to seek improvements in this bill and to examine other methods of de-control on the Senate floor. My hope is that the full Senate will lay aside politics, emotions, and half-facts and will objectively approach the problem in today's natural gas marketplace.

DON NICKLES.

XIII. Minority Views

Minority Views of Senator Heinz

After much deliberation the Committee on Energy and Natural Resources has reported comprehensive natural gas legislation to the Senate floor by a vote of 11–9 without a recommendation.

This result after many hours of mark-up and debate indicates not only a sharply divided committee, but a lack of confidence in the ability of the legislation to address the problems in the natural gas market today.

The legislation reported to the Senate is a Committee substitute for S. 615, the "Natural Gas Consumer Regulatory Amendments of 1983", legislation which was submitted to the Committee by the Administration.

The foundation upon which this legislation is based is the decontrol of old gas. The legislation creates a ramp-up mechanism which over a thirty-six month period will bring the price of old gas to an artificially established Free Market Price Indicator (FMPI). At the same time, the legislation anticipates ramping down new gas prices over a 12 month period to the same FMPI. The primary vehicle used to implement and achieve the price goals established by this "ramp-up/ramp/down" mechanism is the alleged free market principle of contract abrogation.

I am frankly puzzled how tearing up contracts and forcing pipelines and producers to either ramp up or ramp-down to a fixed price can be represented as creating a free market. The chaos that will be created in the market place cannot be worth the alleged benefits.

The incentive to negotiate is the basis of the free market system. This legislation creates absolutely no incentive to negotiate. Rather we are creating a mechanism which bears no relationship to the outcome that would result from a free negotiation among parties to a contract.

The Senate must now focus its attention on whether or not the solutions contained in this legislation bear any relationship to the problem we are experiencing in the natural gas market today.

These problems are well known in Pennsylvania and other consuming States. Despite a surplus of deliverability of some 2 to 3 trillion cubic feet of natural gas, natural gas prices continue to rise on an average annualized basis of 25 percent and in some parts of the country price increases have been on the order of 40 or 50 percent. Consumers have been subject to abusive pipeline purchasing practices which have had the effect of denying consumers access to the cheapest gas available.

The price of natural gas has achieved market clearing levels in many parts of the country, forcing industry with fuel switching capability to turn to alternative fuels. The load loss created has forced distribution companies to spread payment of fixed costs over a narrower consumer rate base. The effect has been to increase the burden of paying for higher purchase gas costs and transmission costs on industrial and residential rate payers with no fuel switching capability.

The automatic pass through of Purchase Gas Adjustment filings has indicated a total abdication of responsibility on the part of the FERC in protecting the interest of all consumers.

Purchased gas costs have increased by 116 percent between 1979 and 1982 based on information provided by the nation's 20 largest interstate pipelines. During the same time period burner tip prices increased by 75 percent (from $2.7/mcf to $482/mcr). Purchased gas costs accounted for 75 percent of the increase in burner tip prices while transmission and distribution increases are equally responsible for the remaining 25 percent increase.

The existence of excessive take or pay requirements particularly with regard to high cost gas and the existence of indefinite price escalators which are guaranteed to create a price spike which bears no relationship to the market place offers little hope of any price relief in the near term.

These problems must be assessed against the successful natural gas supply response which has been stimulated by the incentive price mechanism established by the Natural Gas Policy Act. The fact remains that in the post NGPA period reserve additions have averaged 94 percent of production compared with just 48 percent for the 1968–1978 time period. In 1981 reserve additions were 114 percent of production, in 1982 reserve additions were 111 percent of production.

While it is clear that NGPA has some notable flaws we must first ask whether this legislation will be a net improvement over existing law or whether we would be substituting a new set of problems and inequities for an old one?

Second, will the consumers of this nation be better off because of this legislation or worse off?

Third, will independent producers who have taken risks based on the incentives we in the Congress established in 1978 be able to continue to successfully enhance our long term supplies?

Fourth, will the supply response to the ramping up of old gas prices really create the new supplies promised, or will the ramp-up mechanism only serve to accelerate the depletion of our old gas reserves and increase the rate of revenue flows to old gas producers while at the same time failing to enhance our long term supply requirements?

In thinking about the problems which I believe exist in the natural gas market today and the answers to some of the questions I have posed, I believe that the nation as a whole will be worse off should this legislation be enacted.

I am concerned that the enactment of this legislation will result in chaos in the market place, higher prices for consumers, supply shortages in the future and create glaring inequities between the interstate and intrastate markets.

23-387 O—83——10

Advocates of natural gas decontrol have argued that any comprehensive solution must bring all gas out from under wellhead price controls as quickly and smoothly as possible. Anything less they have argued would serve only to perpetuate existing inequities while giving rise to new ones.

Yet the decontrol provisions of the legislation reported by the Committee on Energy and Natural Resources will only continue the inequities between interstate and intrastate markets which decontrol advocates have sought to eliminate.

Rather than subjecting all gas contracts to the decontrol provisions of the legislation, direct sales contracts have been mysteriously exempted, creating an inequity which will favor consumers and industries in the intrastate market at the expense of their counterparts in the interstate market.

In effect, the terms of direct sale old gas contracts which predominate in the intrastate market would remain frozen under their current terms while old gas contracts in the interstate market would be forced to rise to the price established by the Free Market Price Indicator. Interstate markets would be forced to deal with the consequences of contract abrogation and the certainty of higher prices while intrastate markets would be shielded from the consequences of the free market.

During legislative mark-up, I attempted to amend the legislation and inject the principle of equity by subjecting direct sales contracts to the decontrol provisions of the bill. Though my amendment failed on a tie vote (9–9) it is my hope that the Senate will recognize that any legislation which is finally enacted must be based on the principle of equity.

In addition to creating inequities in natural gas markets, the legislation will create possible inequities among natural gas producers. The market out provisions of the legislation are not equally applied, especially where independent producers are concerned. Some contracts above the Free Market Price indicator will be forced to ramp-down all the way to the Indicator while others will not. An exemption is created on the basis of the existence of a market out provision in contracts above the Free Market price indicator which may be exercised at the option of the purchaser and which does not prohibit the purchaser from adjusting the price equal to the Free Market Price Indicator.

Many existing contracts which are above "free market" prices (especially contracts for tight sands gas which is now priced at $5.56/MMBtu) do not contain market-outs. According to EIA only 21% of post-NGPA gas (Sections 102, 103, 107 and 108) flowing in 1980 contained market-out clauses (19% of interstate gas and 27% of intrastate gas). But 57% of 107 gas flowing in 1980 contained market-outs.

What then will be the practical effect of the market out exemption created? Will some producers be forced to stack their rigs and discontinue production while others are allowed to continue producing? Will 107 deep gas producers in whose contracts market out provisions may predominate be granted an advantage not accorded to other independent producers? Will the legislation in effect create arbitrary winners and losers among independent producers? What will the impact be on the future of our nation's natural gas sup-

plies? These are difficult questions with no easy answers which will deserve the careful attention of the Senate.

As a Senator from a major consuming state whose consumers have had high prices imposed on them as a result of abusive pipeline purchasing practices, I have long felt that a stringent and longstanding pipeline accountability standard must be implemented to protect our consumers from further abuses.

I am very concerned that the legislation reported by the Committee ties pipeline accountability to a prudence standard which expires at the end of the ramp-up period, thereby providing no enduring protection to consumers. I am further concerned that a prudent purchase, which is defined as one which does not exceed 110% of the established FMPI may still result in excessive prices and abusive pipeline purchasing practices. The FMPI which for the first six months is based on the 103 price adjusted for inflation (currently $2.78 MM/Btu) and subsequently based on the weighted average price of new gas contracts will also be calculated on the basis of prices paid for gas imports. Prices paid for imports range from $6–$10 per mcf throughout the nation, thereby assuring that the FMPI will be driven to a higher level. Will the FMPI be driven beyond the market clearing level as a result? What kind of pipeline behavior can consumers expect once the prudence standard has expired? What kind of a supply response will result from the establishment of an FMPI? If we cannot answer these kinds of questions, can we expect consumers to feel secure about the enactment of this legislation?

Perhaps the most important issue before the Committee has been whether or not to decontrol the price of old gas. In my view, the only possible acceptable basis for old gas decontrol is the prospect of a positive supply response. If one truly believes in the free market then the decontrol of old gas can only be based on a concept of re-negotiation coupled with very specific and verifiable attempts to bring more old gas reserves on line. This legislation neglects to demand a supply response and creates a decontrol formula which has no relationship to a freely negotiated market price.

As I have already indicated, the NGPA supply schedule has worked to eliminate the fear of supply shortages in the interstate market.

In the post-NGPA period reserve additions have averaged 94% of production compared with just 48% for the 1968–1978 time period.

In 1982 it is estimated that reserve additions were 111% of production.

In 1981 reserve additions were 114% of production.

Between 1979 and 1982 65% of reserve additions have been added by independent producers.

NGPA has facilitated shallow new gas drilling. During 1982 54% of the natural gas wells estimated to have been drilled were between 0 and 5,000 feet, 30% were between 5,000 and 10,000 feet, 13% were between 10,000 and 15,000 feet and 3% were deeper than 15,000 feet. The percentages for 1981 were almost the same. 58% were between 0 and 5,000 feet, 29% were between 5,000 and 10,000 feet, 10% were between 10,000 and 15,000 feet and 2% were deeper than 15,000 feet.

The supply response from the decontrol of old gas is speculative at best. A combination of DOE and producer analyses indicate that anywhere between 2 and 52 trillion cubic feet of old gas reserves could be added to our reserves as a result of old gas decontrol.

The high marginal costs involved in bringing added old gas reserves on line leads me to conclude that more new gas reserves can be brought on line with the same revenues.

In short, the formula before us fails to decontrol old gas on the accepted free market principle of free negotiation, and fails to seek assurances that there will be more than a marginal supply response from higher old gas prices.

On the positive side, I believe that the contract carriage provisions proposed by Senator Bradley and adopted by the Committee will stimulate much needed competition in the market place and as a result will have the effect of lowering prices for all consumers.

The reduced take or pay obligations provided for in the legislation though not as low as I would like are fair. The establishment of realistic take or pay obligations is one very significant way in which we can provide real price relief to our nation's consumers. A balanced approach will also take into consideration the financial requirements of producers who have taken financial risks to develop new sources of gas production for this nation.

It is evident that I will not be able to support this legislation when it reaches the floor of the United States Senate. However, I believe that the Senate must enact natural gas legislation prior to next winter's heating season. The goal of any comprehensive legislation must be to create an environment of more stable prices and to continue to stimulate the addition of significant reserves to our nation's gas supplies. I look forward to working with many of my colleagues in the Senate in constructing such an approach.

JOHN HEINZ.

Minority Views of Senator Jackson

When the Committee on Energy and Natural Resources began its hearings on the Administration's natural gas bill, I said that I believe, "The vital question before this Committee today is whether new legislation would a net improvement over the existing law, or whether we would be substituting a new set of problems, and inequities, for an old one. The burden must be on those who want to amend the law to convince us that their approach would be better for all concerned."

The bill reported by the Committee does not meet that burden.

While it is easy to criticize the failures of the Natural Gas Policy Act of 1978, and to characterize the ills of today's natural gas markets, it is not easy to prescribe a remedy to cure those ills. Indeed, the Energy and Natural Resources Committee has recognized that difficulty by reporting the bill to the Senate for consideration without endorsing it. Simply put, even my colleagues on the most expert Committee in the Senate cannot agree on the best course to follow.

I have several specific concerns about the bill being reported from the Committee. First, I cannot support the Committee's proposal to "phase up" the price of all old natural gas in three years. Second, I am particularly concerned about the long-term supply response if we deregulate old gas. Without the roll-in capacity of old gas, we will not be able to afford to explore for and develop some of the more promising areas which are particularly expensive to develop. Third, and perhaps most importantly, I am not convinced that the bill being reported from the Committee will work any better than the existing law it seeks to replace.

I remember the "Rube Goldberg" device cartoons used to depict the intricacies of the Natural Gas Policy Act of 1978. If anything, the intricate nature of the NGPA is made even worse by the Committee's proposal. The complex interrelationships of the "ramp down" and "ramp up" proposals, coupled with "continued delivery obligations" and numerous "market out opportunities" make the NGPA look like a model of simplicity.

Certainly there are some problems in the natural gas industry which should be addressed, but the bill being sent to the Senate does not solve those problems. As far as I am concerned, the Committee's proposal is far too generous to natural gas producers, without guaranteeing substantial price relief in either the short term or the long term or natural gas consumers. Nor does it guarantee that our long term natural gas supply needs will be met.

In summary, I do not believe that the Committee's proposed bill would protect natural gas consumers, particularly residential and small business consumers, from unwarranted price increases. As such, I cannot support it.

Henry M. Jackson.

Minority Views of Senators Bumpers and Tsongas

The flaws in this bill are almost too many to mention, but the greatest flaw assuredly is the decontrol of old gas. Under current law, old gas will never be decontrolled, although its price will continue to increase as time passes. That policy is appropriate for many reasons.

First, producing old gas involves no risk and little expense, so a lower price is justified. Second, in the absence of controls, the price would rise at least to the BTU-equivalent of oil, which is still largely controlled by the OPEC cartel. Domestic producers should not be allowed to align themselves with foreign monoplists.

This proposal would scrap these protections and immediately begin decontrolling old gas, so that within 36 months it would merge with the "free market price indicator," a price based upon the price of old gas sold for the first time after enactment of the bill. Consequently, the market would be controlled by a few contracts covering gas which is relatively expensive to produce and thus will command high prices. Most importantly, the current modest oversupply of gas will almost assuredly disappear in the near future, which will send the price for new gas contracts upwards, forcing up the "free market price indicator." Consequently, this proposal will accentuate any upward swings in prices.

Moreover, this result would be achieved through the wholesale abrogation of contracts, a distinctly unique and decidedly undesirable solution. In addition, the contract abrogations would be achieved through a maladroit minuet of terminations, phase-up/phase-downs, and rights of "first offer." It would add undue complications to the natural gas industry.

Although it is true that high-cost gas will also be subject to this complicated procedure, theoretically allowing reductions in price, it is not likely to offer substantial relief. Some of the gas involved is every expensive to produce; as a practical matter, its price cannot be substantially reduced. Also, it will only fall to the "free market price indicator," which is likely to rise significantly during the phase-down period.

Other weaknesses of the proposal are that it repeals the provisions of the Natural Gas Policy Act allowing the reimposition of controls and mandating incremental pricing. It also repeals key sections of the Powerplant and Industrial Fuel Act. All of those provisions are part of the compromises embodied in the NGPA and its sister legislation of 1978. They should not be so casually set aside.

Rather than overturning the established pricing scheme of the NGPA and repealing other important provisions of law, it would be far more preferable simply to limit take-or-pay obligations to 50 percent for a short period of time and to avoid those indefinite price escalator provisions, such as most favored nation clauses,

which violate established public policy. These are the source of the problem, not the pricing provisions of the NGPA and the other provisions of law.

DALE BUMPERS.
PAUL E. TSONGAS.

Minority Views of Senator Metzenbaum

I am opposed to this bill because it would decontrol old gas prices, providing an unearned windfall of at least $40 billion to the top 20 oil companies in America. It would not help consumers battered by soaring prices; it would not help pipelines; it would not help independent producers; it would not help utilities.

The fact that the bill decontrols old gas is bad enough. But the rest of the bill is a technical disaster and an administrative and judicial nightmare. It is studied with loopholes and sleeper provisions. The industry has complained for years that the Natural Gas Policy Act is a regulatory miasma. This measure makes the NGPA look like simplicity itself. In sum, the bill is a Rube Goldberg contraption designed to appease multiple special interests. In the process, it is ambiguous, confusing and ultimately unworkable.

The gerry-built nature of this bill can be seen by the fact that the supporters of the bill have been unable to obtain any reliable estimates of its impact. However, because the bill owes its origin to the Administration's decontrol proposal, the estimates made of that proposal's impact can be taken as an indication of what this bill will do. According to the Energy Information Administration, the administration's proposal would have increased the average residential price for natural gas by 37¢ (5.7 percent) in 1985 and 61¢ (6.8 percent) in 1990, compared to current law. Further, EIA said that the Administration proposal provides consumers with 300 BCF (1.8 percent) less gas in 1985, and 800 BCF (4.9 percent) less gas in 1990, than would be the case under existing law. Under the administration bill, additions to reserves throughout the 1985–1990 period would be less. At the end of that period, there would be less proven reserves in the ground. In short, according to EIA, existing law would produce more supply and support a higher level of consumption at lower prices than the administration bill.

The administration bill was bad. But the bill the Committee has reported would be worse. As is detailed below, the Committee bill eliminates even the minimal consumer protections which the administration bill provided.

THE NATURAL GAS PROBLEM

To understand why decontrol is the wrong response to the nation's natural gas problem, it is logical to examine the current natural gas market. The problem is high prices. Those high prices have not been caused by controls. In fact nothing in the NGPA mandates minimum prices for gas—and nothing is keeping those prices from falling, as recent evidence indicates. The high prices have been caused by private contracts, contracts which were negotiated between pipelines which have failed to fulfill their legal duty to act in the public interest and producers which have been profi-

teering at the consumer's expense. In 1977 and 1978 decontrol was advanced as a solution to shortage. It was argued that higher prices would encourage drilling and bring on more supply. Shortage, however, is not the problem today. Indeed, primarily because industrial gas consumption has been reduced sharply by recession, and secondarily because high NGPA prices for gas from new wells has led to increases in exploration and development activity, a massive surplus of gas has developed since late 1979. For April to September 1983, EIA has estimated that interstate pipelines have 2.6 TCF more gas available to them under contract than their regular customers are willing to consume. This is more gas than would have been necessary to supply all residential gas consumption for the 1982–1983 winter.

Despite the build-up of this massive surplus throughout the 1979–1983 period, according to EIA, the average cost of gas for interstate pipelines rose from $.83 to $3.15, about 207 percent, between 1978 and February 1983. Unavoidable increases in the cost of exploration and production and gradual exhaustion of the cheaper and more easily accessible natural gas supplies are only partial explanations for these increases. The fact is that a large portion of the increases was unnecessary and directly attributable to the business decisions and practices of the producers and pipelines. It is well known, for instance, that pipelines have refused deliveries of cheap gas while continuing to take delivery of more expensive gas. In the state of Ohio, the state's Department of Energy has reported approximately 8.5 BCF of gas went unsold in 1982 for lack of a purchaser. The survey found that most of these Ohio producers would have been willing to sell at a price between $2.50 and $4.00. Similarly, it is well-known that large volumes of extremely cheap gas—some of it would sell for 29¢—has been shut-in in the Hugoton-Anadarko field of Kansas-Oklahoma, while the pipelines who usually purchase from that field have continued to take gas at prices higher than $6. Across the country, cheap gas has been shut-in while pipelines continued to buy gas at $7 or more. A major reason for these practices is the take-or-pay obligations in the pipeline purchase gas contracts. But one shouldn't lose sight of the fact that these are terms of contracts negotiated by the parties voluntarily. They are not a function of current law.

The increases in rates have also been fueled by contracts for decontrolled gas at prices which were in some cases two, three or four times higher than the average price of gas. At present, the average price of Section 107 gas, decontrolled since 1979, is about $6.82, 240 percent higher than the average wellhead price and 192 percent higher than the maximum lawful price for Section 102 gas, frequently viewed as the primary source of new supplies. Section 107 gas in 1982 made up only 6.8 percent of the nation's production, but it accounted for 20.5 percent of the interstate pipelines' gas bill. Once again, these are prices established in voluntary private negotiation. They are not the result of regulation.

In recent months, there have been some signs of producer moderation and pipeline restraint in the market for wellhead gas sales. There are indications that pipelines are seeking to renegotiate their most egregious contracts. The most recent price for deregulated Section 107 gas is $.62 lower than its peak of $7.44 in August

1982. The Interstate Natural Gas Association of America reports that interstate pipelines have exercised 3110 market-out clauses in their purchase gas contracts during the late 1982-early 1983 period, and renegotiated most of these down to a price of about $4.50. These are welcome signs. However, the fact that producers have been able to absorb lower prices is some indication of the pipelines' failure in the first instance to negotiate aggressively on behalf of their customers. Taken together with the shut-ins of low-price supplies in favor of high-price supplies, it is strong evidence that gas costs which pipelines have been passing on to its customers have not been aggressively minimized.

Furthermore, the full implications of these irresponsible contracting practices have not yet been realized. The fact is that pipeline purchase gas practices, and prices established at the wellhead, have been influenced less by competition and hard-nosed negotiation than by the gas industry's collective perception that the appropriate price for gas is one which is based on the price of petroleum product substitutes, in particular diesel and home heating oil. According to EIA, the price of 28 percent of the gas volumes from past-NGPA wells sold in the interstate market will be contractually tied to the price of petroleum products upon deregulation in 1985. Because these oil-parity deregulation clauses will trigger most-favored-nation clauses in contracts covering other gas volumes, EIA anticipates that about 60 percent of the interstate gas which is scheduled for decontrol in 1985 would move into the $6 to $8 price range, resulting in an average price increase in the interstate market of 21 to 84 cents. This is the so-called "price spike" and one of the most important problems which Congress must address.

The conclusion that pipelines have paid and producers have received excessive prices for their gas is further supported by performance data for the major gas producers. According to the Financial Reporting System administered by EIA, the profitability of natural gas and petroleum production by the 26 major energy companies increased by 157 percent in 1978–1981. According to a Citizens Labor Energy Coalition study, profitability of natural gas production (exclusive of oil) has increased similarly: about 159 percent. The companies themselves, which control more than 60 percent of the nation's oil and gas reserves, and are responsible for about 50 percent of its total natural gas production, out-performed the S&P 400 by 3 percent in 1979, 6.5 percent in 1980, and 3.9 percent in 1981.

To summarize, the problem the Senate should address is the failure of pipelines to minimize their gas costs. Pipelines have not only passed up cheap supplies in favor of expensive supplies, and agreed to prices and price formulas which are exorbitant, but they have entered into long-term contractual arrangements which have impaired their ability to respond to market changes. At a minimum, effective consumer legislation would not only require that pipelines engage in prudent purchase gas practices and be held accountable to their customers for their imprudence, but would also void the overbearing contractual provisions which prevent pipelines from lowering their gas costs. Ceilings must be placed on take-or-pay obligations, and price escalation clauses must be defused. According

to the American Gas Association, a solution to the so-called "contracts problem" would reduce residential prices by 4.9 percent in 1984 and 17 percent in 1985.

THE BILL

It is against the background of the problems described above that this bill should be evaluated. How does this bill respond to the problems outlined above? The answer is, it does not.

Instead of prohibiting passthrough of imprudently incurred gas costs, it actually guarantees that costs that fall within an expansively constructed "safe harbor" will be automatically passed through to consumers. Prices in new contracts will also be exempt from regulatory scrutiny as long as the do not drive the pipeline's average gas cost more than 10 percent above the average price of new deregulated gas. Costs relating to any contract made before enactment, though it may establish prices for years to come, are "grandfathered" as prudent and relieved of regulatory scrutiny forever. Even the Administration bill contains a more vigorous check on excessive purchased gas costs. Where in this scheme is the incentive for pipelines' gas purchasing departments to take an aggressive negotiating posture with producers?

On the issue of take-or-pay obligations, this bill is also virtually impotent. On the bill's face, pipelines may, but are not required, to reduce their take-or-pay obligation to 50 percent, 60 percent, and 70 percent in the first, second, and third years after enactment. Because of this bill's failure to adopt a strict passthrough standard, a pipeline would have no reason to use this take-or-pay option. But even if a pipeline were to elect to exercise its rights under these provisions, it is doubtful that most of its take-or-pay obligations could be reached, since any take-or-pay provision which would have the effect of preventing "drainage" would not be covered. The practical effect of this drainage exemption will be to insulate reservoirs operated by more than one producer from the scope of the bill's take-or-pay provisions. That is most of the gas in the country.

On the matter of price escalation clauses, the bill's approach is only to change the date of the price spike. Under the NGPA, the price spike would occur in January 1985, when Section 102 and 103 gas would be largely deregulated. Under the provisions of this bill, the spike will occur 18 months after enactment, in mid-1985 if the bill is enacted in December of this year. Any delay should, of course, be welcomed by consumers, I suppose. Under this bill, however, consumers will receive plenty of jolts while they await the price spike. Consider for instance the day eight months after enactment when the so-called "temporary price indicator" (until then based on the statutory Section 103 price, now about $2.70) becomes the "free-market price indicator" (based on a rolling average of new decontrolled prices). Then there is also the mid-1987 aftershock, when all the gas now priced at less than $2.70 will be deregulated.

The centerpiece of this bill is of course the "free-market price indicator," the "ramps" (one "up" and one "down"), and the rights of contract abrogation called "market-out" rights, which together are intended to usher wellhead prices into the beautiful, carefree world

of decontrol. Under this bill, gas prices over the next few years are intended to depend in large part on this mechanism.

Begin by asking what price level is likely to be established by the free-market price indicator. The answer is that no one knows. It is based on a six-month rolling average of new deregulated gas contracts. The guess advanced by the advocates of the bill is that it is likely to approximate $3. They have no more than anecdotal evidence as a basis for that guess, but they are content to build a bill on its shaky foundation.

I suggest it will be higher. The history of decontrolled prices is that they have on average tended toward a mid-ground between the price of No. 2 and No. 6 fuel oil, both of which substitute for gas in certain markets. A large number of contracts call for pricing parity with one of these two fuels upon deregulation. This theory would suggest a price in the $3.50 to $4.50 range. EIA indicates that the average price of decontrolled gas over the past two and a half years has ranged from $5.83 to $7.44. There is no reason why new deregulated gas prices should break substantially from the price pattern. Certainly, there is no reason to expect the rolling average of new deregulated gas to fall in the $3 range or below.

The relative significance of ramp-up and ramp-down is in turn highly dependent on the assumption made regarding the free-market price indicator levels. It is apparent, for instance, that gas which initially is above the Section 103 market price (about $2.70 now) and consequently on its way down for the first six months, might then be turned around and led up the ramp by an FMPI which "unexpectedly" lands at, say, $4.50. The neat little ramps envisioned by the advocates of this bill may come to resemble roller coasters.

Arguably, ramp-up is no less than the new gas down-ramp. Nevertheless, insofar as the average price of old gas, now accounting for about half of interstate supply, is currently about $1.30, it seems highly unlikely that the up-ramp is going to be disturbed by large quantities of deregulated gas sold at less than $3. If there are major new reservoirs out there which can be developed for less than $3, the Energy Committee has heard nothing of them.

In short, ramp-up of low-cost old gas is a practical certainty under this bill. Ramp-down of high-price new gas is a question mark and, in any case, will last no more than eighteen months. At that point, the pricing of the subject gas will in most cases revert to the contract's original oil-parity and most-favored-nation-deregulation clauses.

The bill's pricing mechanisms are further skewed in favor of a general price increase by the provisions concerning the respective rights of contract abrogation. One feature of ramp-down, for instance, exempts any gas under a contract which includes its own market-out provisions, providing the provision meets certain ambiguous criteria. No one knows how much gas may fall within this exemption. According to EIA, however, nearly ⅕ of the gas volumes associated with post-NGPA wells are subject to some sort of market-out clause.

The certainty of ramp-down, and the consumer benefits it is claimed to provide, is further limited by its optional nature; by the absence of any important incentive for a pipeline to use option; and

by the risk to the pipeline of using its option. Ramp-down only becomes effective if the pipeline invokes it. Since the bill guarantees passthrough of gas costs, it has no pressing reason to exercise ramp-down. Further, since the pipeline risks contract termination and loss of supply when it uses its option, the opportunity presented might easily be refused.

On the other side of the equation, because the producer's revenue is based on the inherent value of its product, not on the volume of its services, ramp-up is far more certain. The producer of low-cost gas incurs no risk in exercising its option to ramp-up. There is a remote possibility that the pipeline will terminate the contract. But that is only an action the pipeline would take if it believed that replacement gas could be purchased at prices well below the free-market price indicator. Again, major supplies of such gas have not been brought to the attention of the Energy Committee.

If the bill's mechanisms for reducing the cost of gas to the customers of interstate pipelines are inadequate, the provisions of the bill which open up the nation's gas supplies to increased industrial consumption (to the detriment of interstate residential supply) are far more effective. The provisions of the Powerplan Industrial and Fuel Use Act restricting the use of natural gas under industrial boilers and the provisions of the NGPA requiring pipelines to assess the cost of their incremental supplies against their industrial customers, would be repealed. Under the contract carriage provisions of the bill, industrial customers will be able to obtain a secure supply even while residential customers and high-priority users purchasing from the same pipeline are curtailed.

Other provisions of the bill will give intrastate pipelines access to gas produced on the Outer Continental Shelf, a source of supply which for years has been dedicated to the interstate market, gas which now accounts for almost half of interstate supply, and gas which, aside from imports, is practically the exclusive source of new supplies for the country. In the intrastate market, primarily Louisiana and Texas, this gas will be used primarily for industrial and boiler fuel. These two states already account for 30 percent of the nation's natural gas consumption, 75 percent of it by industry and electric utilities? Why do they need more? There may be others who are willing to jeopardize interstate supply by opening it up to this market. I am not one of them. These provisions are no more than a prescription for interstate supply shortages.

This bill would even compound the natural locational advantages of Texas and Louisiana by exempting direct sales from the ramp-up mechanism. Eighty percent of the direct sales in the country are made in Louisiana and Texas. In the interstate market, the impact of direct sales are miniscule. In the intrastate markets of Louisiana and Texas, they represent half of total consumption. As a consequence of the special treatment of direct sales, purchasers of direct sales will be provided with a low-cost gas cushion and consequently an unfair advantage in bidding for new supplies. Frankly, I am entirely sympathetic to Gulf Coast consumers, industrial and otherwise, who want to be protected from the ravages of decontrol. But I also have to ask, and believe the Senate must ask, why if decontrol is so good for Ohio and California and Kansas and Pennsylvania

and the other states of this nation, why is it not also good for Louisiana and Texas?

It is only necessary to list some of the other provisions which were included in this bill in an effort to paste together a majority of the Committee. There is an antitrust exemption for gas producer cooperatives. What is that doing in a decontrol bill? Alaska, land of the frontier spirit, is not subject to ramp-up and market-out. Is decontrol not good enough for them either? There is a limitation on off-system gas sales which was inserted to protect intrastate pipelines from competition with interstate pipelines from competition with interstate pipelines: Because it coincidentially protects interstate customers, I am not entirely opposed to this provision. But is this sort of anti-competitive market protection what decontrol is all about? Similarly, there is a provision inserted, neutral on its face, but specifically designed to force a California pipeline to buy more of its gas from the producers which sell to El Paso Pipeline, and less from its affiliate which purchases its gas in Canada. This too is apparently decontrol.

CONCLUSION

Several months ago, when the Committee began consideration of this bill, I remarked, "Decontrol is decontrol is decontrol." Now I wonder.

The fact is that decontrol may be a feature of this bill, but not its raison d'etre. Nor is it consumer relief. The raison d'etre of this bill is to raise the price of old gas. That is to provide a windfall for major oil companies who control much of the old gas supply. According to EIA the 16 majors will increase their profits by as much as 20 percent, or about $4.4 billion in the first year of the Administration's decontrol plan.

I look at this bill and see that it requires pipelines to send every new contract they sign to Washington. I see the bill requires nearly every existing contract between pipeline and producer to be marched toward an arbitrary, unpredictable national price. I talk to attorneys who practice before FERC and they tell me that this bill is unworkable, beset with ambiguity and loopholes, and that FERC will be unable to administer it effectively. Pipelines and producers tell me it will create chaos and confusion. Lawyers tell me they will make a mint.

In 1978, after many months of debate, Congress enacted the NGPA, a compromise based on the notion of partial phased decontrol. Under the NGPA, some gas has already been decontrolled and other gas is being phased up to free-market levels. In January 1985, about half of the nation's gas supply will be freed from price ceilings. I opposed that compromise because of its decontrol features, and believe the history of gas prices since enactment of the NGPA proves my assessment of the NGPA was correct. Nevertheless, I cannot believe it is useful or desirable for the Senate to reopen the fundamental issue of decontrol's scope and schedule. The NGPA is in place. But it does not need to be butchered for the sake of special interests.

The fact is that consumer relief from high natural gas prices can be achieved fairly and simply, without making intrusions in pri-

vate contracts. Such legislation (1) would prohibit pipelines from charging customers for imprudent gas purchases; (2) would enable pipelines to minimize their purchase gas costs by allowing them to reduce take-or-pay obligations on their high-price gas contracts; and (3) would avoid a massive price spike in 1985 by de-activating certain price escalation clauses. Further price reductions could be achieved by adjusting the ceiling prices in the NGPA downward and by capping the permissible price for imported gas. With this option available, I have to wonder why the Committee has complicated and confused the natural gas question by proposing decontrol. It is the wrong solution at the wrong time.

HOWARD M. METZENBAUM.

Minority Views of Senator Bradley

I voted against this bill because it represents a complex and fragile compromise that on balance should be more protective of consumer interests. However, the Committee bill does contain several provisions that could significantly improve market efficiency (the contract carriage provision) and reduce consumer prices (the take-or-pay relief and the ramp down).

The contract carriage provision, adopted by the Committee by an 18–1 vote after three weeks of careful—some would say painful—deliberations, is intended to act as a major step toward a more rational and competitive natural gas market. For the first time since 1938, most local distribution companies and gas consumers will be able to purchase gas from someone other than the interstate natural gas pipeline that serves their region. If distribution companies or consumers can find gas that is priced below their pipeline's gas, they will be able to use the contract carriage provisions of this bill to transport that gas to their facilities. I hope this provision, once enacted, spurs innovative marketing in the natural gas industry, an industry not now known for its innovation. "Competitive", "fast-paced" and "innovative" are not words usually applied to the natural gas industry. I hope the widespread use of contract carriage will breathe new life into the industry and allow natural gas consumers to begin to enjoy the major benefit of healthy competition: the lowest possible prices.

Another valuable feature of contract carriage is the discipline and accountability it will instill in interstate pipeline companies. The mere knowledge that distribution companies and consumers have the option to go around them will force interstate pipeline companies to seek out the cheapest possible gas, in contrast to some of thir previous practices.

Although I believe that the floor of the Senate is not the best place to write a natural gas bill, I will continue my efforts to improve the bill by making it more economically efficient and more protective of consumers' interests in New Jersey and around the Nation.

Bill Bradley.

XIV. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the Natural Gas Policy Act Amendments of 1983, as reported. (Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.)

Natural Gas Policy Act of 1978

AN ACT For the relief of Joe Cortina of Tampa, Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[Private relief matter relating to Joe Cortina not shown.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Natural Gas Policy Act of 1978".

(b) Table of Contents.—

TABLE OF CONTENTS

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—WELLHEAD PRICING

Subtitle A—Wellhead Price Controls

Sec. 101. Inflation adjustment; other general price ceiling rules.
Sec. 102. Ceiling price for new natural gas and certain natural gas produced from the Outer Continental Shelf.
Sec. 103. Ceiling price for new, onshore production wells.
Sec. 104. Ceiling price for sales of natural gas dedicated to interstate commerce.
Sec. 105. Ceiling price for sales under existing intrastate contracts.
Sec. 106. Ceiling price for sales under rollover contracts.
Sec. 107. Ceiling price for high-cost natural gas.
Sec. 108. Ceiling price for stripper well natural gas.
Sec. 109. Ceiling price for other categories of natural gas.
Sec. 110. Treatment of State severance taxes and certain production-related costs.

Subtitle B—Decontrol of Certain Natural Gas Prices

Sec. 121. Elimination of price controls for certain natural gas sales.
[Sec. 122. Standby price control authority.]
[Sec. 123. Report to the Congress.]

Subtitle C—Transitional Price Provisions

Sec. 131. Limitation on ceiling prices for certain natural gas.

[TITLE II—INCREMENTAL PRICING

[Sec. 201. Industrial boiler fuel use.
[Sec. 202. Amendment expanding application for other industrial uses.
[Sec. 203. Acquisition costs subject to passthrough.
[Sec. 204. Method of passthrough.

23-387 O—83——11

[Sec. 205. Local distribution company passthrough requirements.
[Sec. 206. Exemptions.
[Sec. 207. Treatment of certain imports.
[Sec. 208. Alaska natural gas.]

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Subtitle A—Emergency Authorities

Sec. 301. Declaration of emergency.
Sec. 302. Emergency purchase authority.
Sec. 303. Emergency allocation authority.
Sec. 304. Miscellaneous provisions.

Subtitle B—Other Authorities and Requirements

Sec. 311. Authorization of certain sales and transportation.
Sec. 312. Assignment of contractual rights to receive surplus natural gas.
Sec. 313. Effect of certain natural gas prices on indefinite price escalator clauses.
Sec. 314. Clauses prohibiting certain sales, transportation, and commingling.
[Sec. 315. Contract duration; right of first refusal; filing of contracts and agreements.]
Sec. 315. Filing of contracts and agreements.
Sec. 316. Imposition of take-or-pay limits.
Sec. 317. Market out provision.
Sec. 318. Right of first refusal and right of first offer.
Sec. 319. Transportation obligation for certain natural gas.
Sec. 320. Effect of free market price indicator.
Sec. 321. Contract carrier authorization.

TITLE IV—NATURAL GAS CURTAILMENT POLICIES

Sec. 401. Natural gas for essential agricultural uses.
Sec. 402. Natural gas for essential industrial process and feedstock uses.
Sec. 403. Establishment and implementation of agricultural and industrial priorities.
Sec. 404. Limitation on revoking or amending certain pre-1969 certificates of public convenience and necessity.

TITLE VI—ADMINISTRATION, ENFORCEMENT, AND REVIEW

Sec. 501. General rulemaking authority.
Sec. 502. Administrative procedure.
Sec. 503. Determinations for qualifying under certain categories of natural gas.
Sec. 504. Enforcement.
Sec. 505. Intervention.
Sec. 506. Judicial review.
[Sec. 507. Congressional review.]
Sec. 508. Technical amendment.

TITLE VI—COORDINATION WITH THE NATURAL GAS ACT; EFFECT ON STATE LAWS

Sec. 601. Coordination with the Natural Gas Act.
Sec. 602. Effect on State laws.

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) NATURAL GAS.—The term "natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(2) WELL.—The term "well" means any well for the discovery or production of natural gas, crude oil, or both.

(3) NEW WELL.—The term "new well" means any well—

(A) the surface drilling of which began on or after February 19, 1977; or

(B) the depth of which was increased, by means of drilling on or after February 19, 1977, to a completion location which is located at least 1,000 feet below the depth of the

deepest completion location of such well attained before February 19, 1977.

(4) OLD WELL.—The term "old well" means any well other than a new well.

(5) MARKER WELL.—

(A) GENERAL RULE.—The term "marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.

(B) NEW WELLS.—The term "marker well" does not include any new well under paragraph (3)(A) but includes any new well under paragraph (3)(B) if such well qualifies as a market well under subparagraph (A) of this paragraph.

(6) RESERVOIR.—The term "reservoir" means any producible natural accumulation of natural gas, crude oil, or both confined—

(A) by impermeable rock or water barriers and characterized by a single natural pressure system; or

(B) by lithologic or structural barriers which prevent pressure communication.

(7) COMPLETION LOCATION.—

(A) GENERAL RULE.—The term "completion location" means any subsurface location from which natural gas is being or has been produced in commerical quantities.

(B) MARKER WELL—The term "completion location", when use with reference to any market well, means any subsurface location from which natural gas was produced from such well in commercial quantities after January 1, 1970, and before April 20, 1977.

(8) PRORATION UNIT.—The term "proration unit" means—

(A) any portion of a reservoir, as designated by the State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, which will be effectively and efficiently drained by a single well;

(B) any drilling unit, production unit, or comparable arrangement, designated or recognized by the State or Federal agency having jurisdiction with respect to production from the reservoir, to describe that portion of such reservoir which will be effectively and efficiently drained by a single well; or

(C) if such portion of a reservoir, unit, or comparable arrangement is not specifically provided for State law or by any action of any State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, any voluntary unit agreement or other comparable arrangement applied, under local custom or practice within the local in which such reservoir is situated for the purpose of decribing the portion of a reservoir which may be effectively and efficiently drained by a single well.

(9) NEW LEASE.—The term "new lease", when used with respect to the Outer Continental Shelf, means a lease, entered into on or after April 20, 1977, of submerged acreage.

(10) OLD LEASE.—The term "old lease", when used with respect to the Outer Continental Shelf, means any lease other than a new lease.

(11) NEW CONTRACT.—The term "new contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas which was not previously subject to an existing contract.

(12) ROLLOVER CONTRACT.—The term "rollover contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after or such date of enactment) specified by the provisions of such existing contract, as such contract was in effect on the date of the enactment of this Act, whether or not there is an identity of parties or terms with those of such existing contract.

(13) EXISTING CONTRACT.—The term "existing contract" means any contract for the first sale of natural gas in effect on the day before the date of the enactment of this Act.

(14) SUCCESSOR TO AN EXISTING CONTRACT.—The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after the date of the enactment of this Act for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

(15) INTERSTATE PIPELINE.—The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

(16) INTRASTATE PIPELINE.—The term "intrastate pipeline" means any person engaged in natual gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act).

(17) LOCAL DISTRIBUTION COMPANY.—The term "local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(18) COMMITTED OR DEDICATED TO INTERSTATE COMMERCE.—

(A) GENERAL RULE.—The term "committed or dedicated to interstate commerce", when used with respect to natural gas, means—

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of the Natural Gas Act) under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act.

(B) EXCLUSION.—Such term does not apply with respect to—

(i) natural gas sold in interstate commerce (within the meaning of the Natural Gas Act)—

(I) under section 6 of the Emergency Natural Gas Act of 1977;

(II) under any limited term certificate, granted pursuant to section 7 of the Natural Gas Act, which contains a pregrant of abandonment of service for such natural gas;

(III) under any emergency regulation under the second proviso of section 7(c) of the Natural Gas Act; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act, if such certificate was specifically granted for the transportation of that natural gas for such user;

(ii) natural gas for which abandonment of service was granted before the date of enactment of this Act under section 7 of the Natural Gas Act; and

(iii) natural gas which, but for this clause, would be committed or dedicated to interstate commerce under subparagraph (A)(ii) by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leasehold interest), if on May 31, 1978—

(I) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(II) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act) for resale (other than any sale described in clause (i) (I), (II), or (III)).

(19) CERTIFICATED NATURAL GAS.—The term "certificated natural gas" means natural gas transported by any interstate pipeline in a facility for which there is in effect a certificate issued under section 7(c) of the Natural Gas Act. Such term does not include natural gas sold to the user by the producer and transported pursuant to a certificate which is specifically issued under section 7(c) of the Natural Gas Act for the transportation of that natural gas, for such user unless such natural gas is used for the generation of electricity.

(20) SALE.—The term "sale" means any sale, exchange, or other transfer for value.

(21) FIRST SALE.—

(A) GENERAL RULE.—The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) CERTAIN SALES NOT INCLUDED.—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume or natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

(22) DELIVER.—The term "deliver" when used with respect to any first sale of natural gas, means the physical delivery from the seller; except that in the case of the sale of proven reserves in place to any interstate pipeline, any intrastate pipeline, any local distribution company, or any user of such natural gas, such term means the transfer of title to such reserves.

(23) CERTIFICATE.—The term "certificate", when used with respect to the Natural Gas Act, means a certificate of public convenience and necessity issued under such Act.

(24) COMMISSION.—The term "Commission" means the Federal Energy Regulatory Commission.

(25) FEDERAL AGENCY.—The term "Federal agency" has the same meaning as given such term in section 105 of title 5, United States Code.

(26) PERSON.—The term "person" includes the United States, any State, and any political subdivision, agency, or instrumentality of the foregoing.

(27) AFFILIATE.—The term "affiliate", when used in relation to any person, means other person which controls, is controlled by, or is under common control with, such person.

(28) ELECTRIC UTILITY.—The term "electric utility" means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public.

(29) MCF.—The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(30) BTU.—The term "Btu" means British thermal unit.

(31) MONTH.—The term "month" means a calendar month.

(32) MILE.—The term "mile" means a statute mile of 5,280 feet.

(33) UNITED STATES.—The term "United States" means the several States and includes the Outer Continental Shelf.

(34) STATE.—The term "State" means each of the several States and the District of Columbia.

(35) OUTER CONTINENTAL SHELF.—The term "Outer Continental Shelf" has the same meaning as such term has under section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

(36) PRUDHOE BAY UNIT OF ALASKA.—The term "Prudhoe Bay Unit of Alaska" means the geographic area subject to the voluntary unit agreement approved by the Commissioner of the Department of Natural Resources of the State of Alaska on June 2, 1977, and referred to as the "affected area" in Conservation Order No. 145 of the Alaska Oil and Gas Conservation Committee, Division of Oil and Gas Conservation, Department of Natural Resources of the State of Alaska, as such order was in effect on June 1, 1977, and determined without regard to any adjustments in the description of the affected area permitted to be made under such order.

(37) ANTITRUST LAWS.—The term "Federal antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14-19, 20, 21, 22-27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8-9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

TITLE I—WELLHEAD PRICING

Subtitle A—Wellhead Price Controls

SEC. 101. INFLATION ADJUSTMENT: OTHER GENERAL PRICE CEILING RULES.

(a) ANNUAL INFLATION ADJUSTMENT FACTOR.—

(1) GENERAL RULE.—For purposes of this title, the annual inflation adjustment factor applicable for any month shall be the sum of—

(A) a factor equal to one hundredth of the quarterly percent change in the GNP implicit price deflator; plus

(B) a correction factor of 1.002.

(2) QUARTERLY PERCENT CHANGE IN THE GNP IMPLICIT PRICE DEFLATOR.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term "quarterly percent change in the GNP implicit price deflator", when used with respect to any month, means the quarterly percent change in the GNP implicit deflator, computed and published as an annual rate by the Department of Commerce, for the most recent calendar quarter for which such quarterly percent change has been so published at least 8 days before the beginning of such month.

(B) MONTHS BEFORE ENACTMENT.—For purposes of applying such term with respect to any months in any calendar quarter which ends before the date of the enactment of this Act and for which a quarterly percent change in the GNP implicit deflator has been published by the Department of Commerce as of such date of enactment, the quarterly percent change in the GNP implicit price deflator for the calendar quarter in which such month occurs shall be used in lieu of the quarterly percent change in the GNP implicit price deflator for a preceding calendar quarter.

(3) GNP IMPLICIT PRICE DEFLATOR.—For purposes of paragraph (2)—

(A) IN GENERAL.—The term "GNP implicit price deflator" means, except as provided in subparagraph (B), the preliminary estimate of the implicit price deflator, seasonally adjusted, for the gross national product, as computed and published by the Department of Commerce for the calendar quarter involved.

(B) MOST RECENT DATA AVAILABLE ON ENACTMENT.—The most recent revision, if any, of such implicit price deflator which has been so published before the date of the enactment of this Act, shall be used in lieu of the preliminary estimate of such implicit price deflator.

(b) RULES OF GENERAL APPLICATION.—

(1) DEPTH.—Except where otherwise provided, the depth of the completion location of any well shall be the true vertical depth, measured from the surface location of the well.

(2) COMMERCIAL QUANTITIES.—In determining whether production of natural gas has occurred in commercial quantities, quantities of natural gas produced from a well and used for the testing of such well or for other field uses which are production related shall not be taken into account.

(3) COMPUTATION OF MONTHLY EQUIVALENT.—For purposes of computing any price under this title, the monthly equivalent of any factor shall be the twelfth root of such factor.

(4) APPLICATION OF CEILING PRICES.—The maximum lawful ceiling prices under this title—

(A) shall only apply to natural gas produced in the United States;

(B) shall apply to the month of delivery without regard to the date of the sale or the date of the contract under which the sale occurs; and

(C) shall not apply to deliveries occurring before the first day of the first month beginning after the date of the enactment of this Act.

(5) SALES QUALIFYING UNDER MORE THAN ONE PROVISION.—If any natural gas qualifies under more than one provision of this title providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable[.], *but in no event shall the operation of this paragraph be deemed to entitle any seller of certain natural gas subject to section 131 to collect a price in excess of the price under section 131.*

(6) COMPUTATION AND PUBLICATION OF CEILING PRICES.—The Commission shall—

(A) not later than 5 days before the beginning of any month, compute and make available the maximum lawful prices prescribed under this title for such month and the monthly equivalent of the annual inflation adjustment factor for such month, and

(B) as soon as possible thereafter, publish such maximum lawful prices and such factor for such month in the Federal Register.

(7) ROUNDING.—Any maximum lawful price under this title shall be computed to the nearest mill (rounding any fraction

thereof which is one-half a mill or higher to the next highest mill).

(8) COMPUTATION OF INITIAL CEILING PRICES.—In computing any maximum lawful price under the provisions of this title for the first month for which such provisions take effect, if the initial maximum lawful price is established by reference to any month before such month, such maximum lawful price shall be computed as if such provisions had been in effect during each such prior month.

(9) EFFECT ON CONTRACT PRICE.—In the case of—

(A) any price which is established under any contract for the first sale of natural gas and which does not exceed the applicable maximum lawful price under this title, or

(B) any price which is established under any contract for the first sale of natural gas which is exempted under subtitle B of this title from the application of a maximum lawful price under this title, such maximum lawful price, or such exemption from such a maximum lawful price, shall not supersede or nullify the effectiveness of the price established under such contract[.], *except as provided in section 131.*

(10) PRICE CONSIDERED MARKET VALUE.—For purposes of determining the amount payable as royalty under any provision of any oil or gas lease (other than those involving state owned lands) on private, Federal or Indian lands or under any provision of Federal or State law, that bases the royalty on market value, any price paid for natural gas under any contract in effect on the date of the enactment of this paragraph and any subsequent contracts shall be considered its market value if the price was established—

(A) Pursuant to the provisions of the Natural Gas Policy Act Amendments of 1983; or

(B) Pursuant to the renegotiation of that contract if that renegotiation occurred after the date of enactment of the Natural Gas Policy Act Amendments of 1983. In the case of any such renegotiated contract between any person and an affiliate of that person, this paragraph shall apply only if the price paid does not exceed the amount paid in first sales between similarly situated parties not affiliated with each other which are comparable as to the quality and delivery conditions.

SEC. 102. CEILING PRICE FOR NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF.

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SEC. 103. CEILING PRICE FOR NEW, ONSHORE PRODUCTION WELLS.

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SEC. 104. CEILING PRICE FOR SALES OF NATURAL GAS DEDICATED TO INTERSTATE COMMERCE.

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SEC. 105. CEILING PRICE FOR SALES UNDER EXISTING INTRASTATE CONTRACTS.

(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of natural gas, sold under any existing contract or any successor to an existing contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act.

(b) MAXIMUM LAWFUL PRICE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the maximum lawful price under this section shall be the lower of—

(A) the price under the terms of the existing contract, to which such natural gas was subject on the date of the enactment of this Act, as such contract was in effect on such date; or

(B) the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

(2) CONTRACT PRICE EXCEEDING NEW GAS CEILING PRICE ON ENACTMENT.—In the case of any natural gas described in subsection (a) for which the contract price applicable on the date of the enactment of this Act exceeds the maximum lawful price, per million Btu's, computed for such date under section 102 (relating to new natural gas), the maximum lawful price under this section shall be the higher of—

(A) the maximum lawful price, per million Btu's, computed for such month under section 102; or

(B)(i) the contract price on the date of the enactment of this Act, in the case of the month in which this Act is enacted; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(3) PRICE INCREASES RESULTING FROM INDEFINITE PRICE ESCALATOR CLAUSES.—

(A) IN GENERAL.—Effective January 1985, and each month thereafter, in the case of any first sale of natural gas, which is sold at a price established under any indefinite price escalator clause of any existing contract or successor to an existing contract and for which the contract price on December 31, 1984, is higher than $1.00 per million Btu's, the maximum lawful price under this section for any such natural gas delivered during any month shall be the higher of—

(i) the maximum lawful price, per million Btu's, computed under paragraph (2)(B); or

(ii)(I) in the case of January 1985, the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for such month; and

(II) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this clause for the immediately preceding month multiplied by the monthly equivalent of the sum of a factor equal to the annual inflation adjustment factor applicable for such month plus .03.

(B) DEFINITIONS OF INDEFINITE PRICE ESCALATOR CLAUSE.—For purposes of this paragraph, the term "indefinite price escalator clause" includes any provision of any contract—

(i) which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

This definition shall not include any clause which establishes the price for natural gas exempted from the operation of this title pursuant to section 121(f).

(C) CONTRACT MODIFICATIONS AFTER MAY 3, 1978, TO BE DISREGARDED.—In the case of any natural gas which was subject to any contract on May 3, 1978, that contained an indefinite price escalator clause on such date, no amendment to or modification of the operation of such contract made after such date may have the effect of limiting or precluding the application of this paragraph on or after January 1, 1985, to prices allowed with respect to such natural gas.

(D) EXCLUSION.—Subparagraph (A) shall not apply to any first sale of new natural gas (as defined in section 102(c)), stripper will natural gas (as defined in section 108(b)), high-cost natural gas (as defined in section 107(c)), natural gas produced from a new, onshore production well (as defined in section 103(c)) from a completion location located at a depth of more than 5,000 feet, and, beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122, natural gas produced from any new, onshore production well (as defined in section 103(c)) from a completion location located at a depth of 5,000 feet or less.

SEC. 106. CEILING PRICE FOR SALES UNDER ROLLOVER CONTRACTS.

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SEC. 107. CEILING PRICE FOR HIGH-COST NATURAL GAS.

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SEC. 108. CEILING PRICE FOR STRIPPER WELL NATURAL GAS.

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SEC. 109. CEILING PRICE FOR OTHER CATEGORIES OF NATURAL GAS.

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SEC. 110. TREATMENT OF STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.

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Subtitle B—Decontrol of Certain Natural Gas Prices

SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES.

(a) GENERAL RULE.—[Subject to the reimposition of price controls as provided in section 122, the] *The* provisions of subtitle A respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall, except as provided in subsections (d) and (e), cease to apply effective January 1, 1985:

(1) NEW NATURAL GAS.—New natural gas (as defined in section 102(c)).

(2) NEW ONSHORE PRODUCTION WELLS.—Natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) INTRASTATE CONTRACTS IN EXCESS OF $1.00.—Natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if—

(A) such natural gas was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, and

(B) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price would have been paid had deliveries occured on such date is higher than $1.00 per million Btu's.

(b) HIGH-COST NATURAL GAS.—Effective beginning on the effective date of the incremental pricing rule required under section 201, the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas shall cease to apply to the first sale of high-cost natural gas which is described in section 107(c)(1), (2), (3), or (4).

(c) NATURAL GAS PRODUCED FROM 5,000 OR LESS.—Effective beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122, the provisions of subtitle A respecting the maximum lawful price for any first sale of natural gas shall, except as provided in subsection (d), cease to apply to any first sale of natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

(1) was not committed or dedicated to interstate commerce on April 20, 1977; and

(2) is produced from a completion location which is located at a depth of 5,000 feet or less.

(d) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The provisions of subsections (a) and (c) shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported

through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(e) LIMITATION ON INDEFINITE PRICE ESCALATORS.—Natural gas which is not subject to maximum lawful prices under subtitle A solely by reason of subsection (a)(3) and which is sold under any existing contract or successor to an existing contract at a price established under an indefinite price escalator clause (as defined in section 105(b)(3)(B)) shall be subject to the provisions of section 105(b)(3).

(f) SPECIAL RULE.—The provisions of subtitle A shall not apply to—

(1) gas subject to any contract for the first sale of natural gas that was executed after the date of enactment of this subsection, or

(2) gas subject to any contract for the first sale of natural gas that was renegotiated after the date of enactment of this subsection, if such renegotiated contract expressly provides that the provisions of subtitle A shall not apply, or

(3) released take or pay gas under subsection 316(e) of this Act, or

(4) gas subject to an election under section 131 (b) or (c) of subtitle C of this title.

(g) REMOVAL OF WELLHEAD PRICE CONTROLS ON ALL NATURAL GAS.—

(1) On the first day of the forty-fourth full month after enactment of section 131, the provisions of this title shall cease to apply except as specified in paragraph (2) or (3).

(2) The provisions of this title shall cease to apply to natural gas subject to subsection 131(b) on the first day of the twentieth full month after the enactment of this subsection or at the conclusion of any additional time period specified for continued contract obligations pursuant to paragraph 131(a)(3)(B)(i).

(3) The provisions of this title shall cease to apply to natural gas subject to subsection 131(c) on the first day of the forty-fourth full month after the enactment of this subsection or at the conclusion of any additional time period specified for continued contract obligations pursuant to paragraph 131(a)(3)(B)(i).

SEC. 122 STANDBY PRICE CONTROL AUTHORITY.

(a) REIMPOSITION OF PRICE CONTROLS.—The President, in accordance with subsection (c)(1), or the Congress, in accordance with subsection (c)(2), may reimpose maximum lawful prices for first sales of natural gas to which section 121(a) applies and delivery of which occurs after the effective date of the reimposition of such maximum lawful prices.

(b) LIMITATIONS.—A reimposition of maximum lawful prices under this section—

(1) may not take effect earlier than July 1, 1985, nor later than June 30, 1987; and

(2) shall remain in effect for a period of 18 months.

(c) PROCEDURE FOR REIMPOSING PRICE CONTROLS.—For purposes of this section—

(1) PRESIDENTIAL REIMPOSITION.—Any exercise of authority by the President under subsection (a) shall be by written order issued after May 31, 1985, and, subject to subsection (b), shall take effect for the first month beginning after the first 30 calendar days of continuous session of Congress (as determined in accordance with section 507(b)) after a copy of such order has been submitted to each House of the Congress unless during such 30 calendar days of continuous session of Congress, the Congress adopts a concurrent resolution of disapproval described in section 507(c)(1).

(2) CONGRESSIONAL REIMPOSITION.—Any exercise of authority by the Congress under subsection (a) shall be by the adoption of a concurrent resolution after May 31, 1985, described in section 507(c)(2) and, subject to subsection (b), shall take effect for the first month beginning after the date of the adoption of such resolution.

(d) MAXIMUM LAWFUL PRICES APPLICABLE UNDER REIMPOSITION OF PRICE CONTROL.—If maximum lawful prices are reimposed under this section on first sales of natural gas to which section 121(a) applies, the maximum lawful price under this section for any first sale of such natural gas delivered during any month shall be—

(1) except as provided in paragraph (2), the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas); and

[(2) the maximum lawful price, per million Btu's, computed for such month under section 103(b)(2) (relating to new, onshore production wells 5,000 feet or less in depth), in the case of natural gas produced from any new, onshore production well (as defined in section 103(c)) if such natural gas—

[(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

[(B) is produced from a completion location which is located at a depth of 5,000 feet or more.

[(e) ALLOWANCE FOR STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.—A price may exceed the maximum lawful price applicable for such natural gas under this section to the same extent as is provided under section 110 with respect to maximum lawful prices under subtitle A.

[(f) LIMITATION.—Maximum lawful prices may be reimposed only once under this section.

[SEC. 123. REPORT TO THE CONGRESS.

[(a) REPORTS.—On or before July 1, 1984, and on or before January 1, 1985, the Department of Energy shall prepare and transmit to the President and to each House of the Congress a report on natural gas prices, supplies, and demand, and the competitive conditions and market forces in the natural gas industry in the United States. Each such report shall include an evaluation by the Department of Energy whether equilibrium exists between supply and demand for natural gas.

[(b) PUBLIC COMMENT.—In preparing each report required under subsection (a), the Department of Energy shall provide an opportu-

nity for public comment with respect to matters required under subsection (a) to be included in such report.]

Subtitle C—Transitional Price Provisions

SEC. 131. LIMITATION ON PRICES FOR CERTAIN NATURAL GAS.

(a) GENERAL RULE OF APPLICABILITY.—

(1) COVERAGE.—The provisions of this section shall apply to contracts for the first sale for resale of natural gas produced in the contiguous forty-eight States or from adjacent portions of the Outer Continental Shelf, including gas purchased by a pipeline for use in pipeline transmission, but not including gas which is described in section 121(f) (1), (2), or (3).

(2) PARTIES MAY ELECT.—The provisions of this section shall apply only if either party to a contract for the first sale for resale of natural gas so elects—

(A) NOTICE OF ELECTION.—The party making such election must give notice to the other party to the contract, and must file a copy of such notice with the Commission within five days.

(B) ELECTION PERIOD.—The election must be made no later than the first day of the fifth full month after enactment of this section; such notice must have been received by the other party to the contract by that date.

(C) EFFECT OF NON-ELECTION.—Where neither party to a contract for the first sale for resale of natural gas so elects, the contract shall remain subject to the otherwise applicable provisions of this Act.

(3) OPTIONS AVAILABLE TO NON-ELECTING PARTIES.—Where either party to a contract for the first sale for resale of natural gas makes the election specified in paragraph (2), the other party shall have the options specified in this paragraph—

(A) For a contract subject to subsection (c) where the seller elects to alter the contract by making the election specified in paragraph (2), the purchaser shall have the option, to be exercised within fifteen days of receipt of notice of an election, to agree to such election or terminate the contract. If such option is not exercised within such period, the purchaser shall be deemed to have agreed to such election—

(i) If the purchaser exercises the option to terminate the contract, the purchaser or seller shall have the option to compel continued performance in accordance with the provisions of the terminated contract at the price specified in subsection (c)(2) until such date as the seller has entered into a contract with a new purchaser, unaffiliated with such seller, who is capable of receiving the gas that was subject to the terminated contract: Provided, however, That the seller's authority to compel continued performance under the terms of the contract shall expire at the end of twelve months. If the seller has not obtained such a new purchaser prior to the end of the first eighteen months of the thirty-six month period specified in paragraph (c)(1), the purchas-

er may elect to no longer compel such continued performance by the producer as of such date.

(ii) If the purchaser agrees to an election, the purchaser, at the end of the first eighteen months of the thirty-six month period specified in paragraph (c)(1), shall have an additional option to terminate the contract subject to the provisions of subparagraph (i).

(iii) Neither party to a contract terminated pursuant to this paragraph shall have any obligation to perform any act because of the contract after the effective date of termination of the contract, except as provided herein and in section 317(e)(3).

(B) For a contract subject to subsection (b) where the purchaser elects to alter the contract by making the election specified in paragraph (2), the seller has the option, to be exercised within fifteen days of receipt of notice of election, to agree to such election or terminate the contract—

(i) If the seller exercises the option to terminate the contract, such seller shall continue performance under the contract at the price specified in subsection (b)(2) until such date as the seller—

(aa) enters into a contract with a new purchaser, unaffiliated with such seller, who is capable of receiving the gas that was subject to the terminated contract or—

(bb) one year, whichever is earlier.

(ii) Neither party to a contract terminated pursuant to this paragraph shall have any obligation to perform any act because of the contract after the effective date of termination of the contract except as provided herein and in section 317(e)(3).

(4) EXEMPTION.—The provisions of this section shall not apply to contracts for the first sale of gas for resale, if such contract meets the requirements for an exemption under this paragraph—

(A) REQUIREMENTS.—To qualify for the exemption, the contract for the sale for resale of natural gas must contain a clause that—

(i) may be exercised at the option of the purchaser,

(ii) enables the purchaser to adjust the price of natural gas subject to the contract; and

(iii) does not prohibit the purchaser from adjusting the price to a price equal to the applicable price indicator.

(B) DISQUALIFICATION.—The exemption shall not apply if the clause is not available for exercise by the purchaser on the first day of the second full month after the date of enactment of this section, or if the seller provides notice within thirty days after the enactment of this section that the clause does not satisfy the requirements set forth in paragraph (A).

(5) EXPIRING CONTRACTS.—If a contract for natural gas not subject to section 121(a), (b), or (c) of this Act has been the subject of an election under paragraph (2) of this subsection and if

the contract expires prior to the expiration of the time periods specified in subsections (b), (c), or (d), performance under the contract by both parties shall continue at the price specified by such applicable subsections until the expiration of the six month period specified in subsection (d). Upon the expiration of such six month period, the termination of the contract shall be effective. The right of first refusal and right of first offer provisions of section 318 shall not apply to the sale of gas subject to such terminated contract.

(6) RIGHT OF FIRST REFUSAL AND RIGHT OF FIRST OFFER APPLICABILITY.—Except as provided in paragraph (5), the right of first refusal and right of first offer in section 318 shall apply to the sale of gas subject to any contract terminated pursuant to this subsection.

(b) APPLICATION TO HIGH PRICED GAS.—

(1) GENERAL RULE.—Beginning with the first day of the second full month after the date of enactment of this section, and effective for a ceiling price limitation period of twelve months thereafter, the price of natural gas subject to this subsection shall be the lower of the contract price or the computed price under paragraph (2) for a contract which was the subject of an election by one party and the agreement of the other party under the procedures of subsection (a)(3)(B). In no event, however, shall the price of natural gas subject to this subsection be less than the price established by the applicable price indicator.

(2) COMPUTED PRICE.—The computed price per million Btu's under this subsection for any month shall be equal to the base price, minus the quotient of the surplus price divided by the number of months in the price control period.

(3) GAS COVERED BY THIS SUBSECTION.—This subsection applies to the first sale for resale of any gas where the price in effect for such sale on the first day of the second full month following the date of enactment equals or exceeds the applicable price indicator on that date.

(c) APPLICATION TO LOW PRICED GAS.—

(1) GENERAL RULE.—Beginning with the first day of the second full month after the date of enactment of this section, and effective for a ceiling price limitation period of thirty-six months thereafter, the price of natural gas subject to this subsection shall be the computed price under paragraph (2) for a contract which was the subject of an election by one party and the agreement of the other party under the procedures of subsection (a). In no event, however, shall the price of natural gas subject to this subsection exceed the price established by the applicable price indicator.

(2) COMPUTED PRICE.—The computed price per million Btu's under this subsection for any month shall be equal to the base price, plus the quotient of the price controlled price divided by the number of months in the price control period.

(3) GAS COVERED BY THIS SUBSECTION.—This subsection applies to the first sale for resale of any gas where the applicable price indicator exceeds the price in effect for such sale on the first day of the second full month following the date of enactment of this section.

(d) ADDITIONAL PERIOD FOR CONTRACT PRICE LIMITATION.—The contract price of natural gas subject to subsection (b) or (c) shall not exceed the free market price indicator for an additional six-month period following expiration of the twelve-month period specified in subsection (b) or the thirty-six-month period specified in subsection (c), respectively.

(e) DEFINITONS.—for purposes of the calculation required by this section, the term—

(1) "base price" means, for any calendar month, the price for that gas for the previous calendar month;

(2) "price control period" is the divisor and means the number of calendar months, including the current month, remaining before the expiration of the ceiling price limitation period specified in the general rule, plus one;

(3) "price controlled price" is the dividend and means the amount by which the applicable price indicator exceeds the base price; and

(4) "surplus price" is the dividend and means the amount by which the base price for that gas exceeds the applicable price indicator.

(f) APPLICABLE PRICE INDICATOR.—

(1) TEMPORARY PRICE INDICATOR.—A temporary price indicator equal to the price computed under section 103 of this Act will be the applicable price indicator for the first six months of operation of this section. It will go into effect the first day of the second full month after enactment of this section.

(2) FREE MARKET PRICE INDICATOR.—Beginning on the first day of the eighth full month after enactment of this section, the free market price indicator will be the applicable price indicator. The term "free market price indicator" means, for a particular month, the volume weighted average of the price per million Btu's for natural gas under contracts exempt from ceiling prices pursuant to section 121(f)(1) entered into during the six months prior to the month in which the calculation is made and under contracts for imports authorized under section 3 of the Natural Gas Act which are authorized during the six months prior to the month in which the calculation is made, including all subsequent amendments to such contracts made during such six-month period. Any allowances subject to section 110 of this Act shall be excluded from the calculation.

(g) PUBLICATION.—Beginning with the first day of the seventh full month after enactment of this section and continuing for thirty-six months thereafter, the Commission (in accordance with section 101(b)(6)) shall compute and publish the free market price indicator for each succeeding month.

(h) FILING REQUIREMENT.—

(1) A purchaser of natural gas under a contract subject to section 121(f)(1) shall file with the Commission within five days of the date on which such contract is executed or amended within six months of execution—

(A) a summary of the contract and all ancillary agreements, including all pricing provisions;

(B) the prices to be paid under the contract during the first six months of deliveries;

(C) the estimated volumes (in millions of Btu's) to be delivered during the first six months; and

(D) any additional data required by the Commission.

(2) A copy of the data filed for each contract, and contract amendment, shall be served by the purchaser of the gas on the other parties to the contract.

(3) At the end of the period when the Commission ceases computing and publisning the free market price indicator, in accordance with section 131(g), a purchaser's filing obligation under this subsection shall terminate.

(i) SECTION 110 ALLOWANCES.—A price for the first sale of natural gas shall not be considered to exceed the price established for the first sale of such natural gas under this section if such price exceeds the price established hereunder due to any allowance established under the provisions of section 110 of this Act.

(j) CONTRACTS COVERING MORE THAN ONE CATEGORY OF NATURAL GAS.—For purposes of subsection 131(a), any contract covering two or more categories of natural gas for purposes of pricing the natural gas delivered under the contract shall be treated as two separate contracts if one or more categories is priced as stated in 131(b)(3) and one or more categories is priced as stated in 131(c)(3). In such event, one contract shall be considered to include all categories priced as stated in 131(b)(3) and the other contract shall be considered to include all categories priced as stated in 131(c)(3).

(k) COMMISSION RULES.—Within thirty days of the enactment of this section, the Commission shall issue rules to implement this section.

[TITLE II—INCREMENTAL PRICING

[SEC. 201. INDUSTRIAL BOILER FUEL USE.

[(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Commission shall prescribe and make effective (and may from time to time amend) a rule designed to provide for the passthrough, in accordance with the provisions of this title, of the costs of natural gas which are—

[(1) described in section 203; and

[(2) incurred by any interstate pipeline.

[(b) INITIAL APPLICATION.—The requirements of the rule under this section shall apply with respect to the boiler fuel use of natural gas by any industrial boiler fuel facility.

[(c) DEFINITIONS.—For purposes of this section—

[(1) INDUSTRIAL BOILER FUEL FACILITY.—The term "industrial boiler fuel facility" means any industrial facility, as defined by the Commission, which uses natural gas as a boiler fuel and which is not exempt under section 206.

[(2) BOILER FUEL USE.—The term "boiler fuel use" means the use of any fuel for the generation of steam or electricity.

[SEC. 202. AMENDMENT EXPANDING APPLICATION FOR OTHER INDUSTRIAL USES.

[(a) IN GENERAL.—

[(1) COMMISSION RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall, by rule, prescribe an amendment to the rule required under sec-

tion 201 designed to provide for the passthrough, in accordance with the provisions of this title, of the costs of natural gas which are—

[(A) described in section 203; and

[(B) incurred by any interstate pipeline.

[(2) EFFECTIVENESS.—The amendment required by this section, and any amendment to the rule under section 201 which is applicable to facilities to which the amendment required by this section applies (other than a technical or clerical amendment), shall take effect only as provided under subsection (c).

[(b) EXPANDED APPLICATION.—The requirements of the rule under section 201, as amended under subsection (a), shall apply with respect to the industrial use of natural gas (as defined by the Commission in such rule), including boiler fuel use of natural gas (as defined in section 201(C)(2) [1]) by—

[(1) any industrial boiler fuel facility (as defined in section 201(c)(1)); and

[(2) any industrial facility which is within a category defined by the Commission in such amendment as subject thereunder to the requirements of such rule which is not exempt under section 206.

[(c) CONGRESSIONAL REVIEW.—

[(1) IN GENERAL.—Any amendment, the effectiveness of which is subject to this subsection, shall take effect beginning with the first month which begins more than 30 days after the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such amendment has been submitted to each House of the Congress or on such later date, not more than 90 days thereafter, as may be provided in such amendment unless, during such 30-day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3) with respect to such amendment.

[(2) AUTHORITY IN THE EVENT OF CONGRESSIONAL DISAPPROVAL.—

[(A) AUTHORITY TO RESUBMIT.—If either House of the Congress adopts a resolution of disapproval with respect to the amendment required under subsection (a) (or any amendment proposed and submitted under this subparagraph), the Commission may thereafter submit to each House of the Congress an amendment, satisfying the requirements of subsections (a) and (b), which amendment shall take effect as provided under paragraph (1).

[(B) LIMITATION.—The authority of subparagraph (A) may not be exercised—

[(i) earlier than 6 months after the date of the adoption of the most recent resolution of disapproval with respect to any such amendment under this section; and

[(ii) later than 2 years after the date of the adoption of any resolution of disapproval described in sec-

[1] So in original. Apparently should be "section 201(c)(2)".

tion 507(c)(3) with respect to the amendment required under subsection (a).

[SEC. 203. ACQUISITION COSTS SUBJECT TO PASSTHROUGH.

[(a) IN GENERAL.—The following costs shall be subject to the passthrough requirements of the rule prescribed under section 201 (including any amendment under section 202):

[(1) NEW NATURAL GAS.—In the case of new natural gas (as defined in section 102(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

[(2) NATURAL GAS UNDER INTRASTATE ROLLOVER CONTRACT.—In the case of natural gas, delivered under a rollover contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, any portion of the first sale acquisition cost of such natural gas which exeeds the incremental pricing threshold applicable for the month in which such delivery occurs.

[(3) NEW, ONSHORE PRODUCTION WELL GAS.—In the case of natural gas produced from any new, onshore production well (as defined in section 103(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

[(4) LNG IMPORTS.—Subject to section 207, in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States.

[(5) NATURAL GAS (OTHER THAN LNG) IMPORTS.—Subject to section 207, in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for the month in which such natural gas enters the United States, without regard to section 110.

[(6) STRIPPER WELL NATURAL GAS.—In the case of stripper well natural gas (as defined in section 108(b)), any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for the month in which the delivery of such natural gas occurs, without regard to section 110.

[(7) HIGH-COST NATURAL GAS.—In the case of high-cost natural gas (as defined in section 107(c)), any portion of the first sale acquistion cost of such natural gas which exceeds 130 percent of the amount the Commission determines represents—

[(A) the weighted average per barrel cost of Number 2 fuel oil landed in the greater New York City metropolitan area, during an appropriate period preceding the month

during which delivery of such natural gas occurs; divided by

[(B) a Btu conversion factor of 5.8 million Btu's per barrel.

[(8) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

[(A) any portion of the first sale acquisition cost of such natural gas which is not described in subparagraph (B) and which exceeds the maximum lawful price, per million Btu's computed under section 109 (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs, without regard to section 110; and

[(B) any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

[(9) INCREASED STATE SERVERANCE TAXES.—

[(A) INCREASES INCLUDED.—Any portion of the cost of natural gas at any first sale attributable to any increase in the amount of State severance taxes (as defined in section 110(c)) which results from a provision of State law enacted on or after December 1, 1977.

[(B) CERTAIN CHANGES ALLOWED IN METHOD OF COMPUTING TAX.—Subparagraph (A) shall not apply to any increase in State severance taxes resulting from a change in the method of computation of such tax by reason of any provision of State law enacted on or after December 1, 1977, if—

[(i) as of the effective date of such change in method of computation such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such State, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

[(ii) such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

[(C) DETERMINATION OF AVERAGE PRICE.—The price to be used in determining the weighted average first sale price for purposes of clause (i) shall be the price paid at the first sale which is used by such State in administering such tax (or an imputed value, if the State uses an event other then a first sale in administering such tax).

[(10) PURCHASES UNDER SECTION 311.—In the case of any sale of natural gas authorized under section 311, any portion of any amount paid, per million Btu's in the acquisition of such natu-

ral gas in any such sale which exceeds the incremental pricing threshold applicable for the month in which such acquisition occurs.

[(11) SURCHARGES PAID TO OTHER PIPELINES.—The amount of any surcharge (described in section 204(c)(3)) paid by any interstate pipeline for natural gas acquired by such pipeline from another interstate pipeline.

[(b) FIRST SALE ACQUISITION COST.—

[(1) GENERAL RULE.—For purposes of this section, the first sale acquisition cost of natural gas is—

[(A) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; and

[(B) the price paid for such natural gas, per million Btu's at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

Any amount of State severance taxes paid at any first sale shall not be included under subparagraph (A) or (B).

[(2) INTERSTATE PIPELINE PRODUCTION.—For purposes of this section, in the case of any natural gas produced by any interstate pipeline or any affiliate of such pipeline, the first sale acquisition cost of such natural gas shall be determined in accordance with rules prescribed by the Commission.

[(c) INCREMENTAL PRICING THRESHOLD.—For purposes of this section the incremental pricing threshold applicable for any month shall be—

[(1) $1.48 per million Btu's, in the case of March 1978; and

[(2) in the case of any month thereafter, the amount, per million Btu's, determined under this subsection for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101(a)) applicable for such month.

[(d) CLASSIFICATION TO BE BASED ON PROVISIONS UNDER WHICH SALE PRICE IS DETERMINED.—In the case of natural gas which is described in more than one paragraph of paragraphs (1) through (8) of subsection (a), the Commission shall, by rule, prescribe the method for determining under which such paragraph the first sale acquisition costs of such natural gas shall be subject to the passthrough requirements of this title, based upon the classification of such natural gas under which the price of such natural gas is determined under title I.

SEC. 204. METHOD OF PASSTHROUGH.

[(a) ESTABLISHMENT OF INCREMENTAL PRICING ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any interstate pipeline subject to such rule shall establish and maintain an incremental pricing account (hereinafter in this title referred to as the "account").

[(b) CREDITS TO ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any costs subject to the passthrough requirements of this title under section 203 (and any carrying charges permitted by

the Commission) shall be credited to the account of such pipeline. Amounts so credited may not be allocated to the rates and charges of such pipeline except to the extent provided under this section.

[(c) REQUIREMENT FOR DIRECT PASSTHROUGH.—

[(1) IN GENERAL.—The rule required under section 201 (including any amendment under section 202 to such rule) shall be designed to provide that any amounts in any interstate pipeline's account will be passed through, in accordance with a method prescribed under paragraph (2), by means of a surcharge determined in accordance with a method prescribed under paragraph (3).

[(2) SURCHARGE PASSTHROUGH.—The rule required under section 201 (including any amendment under section 202) shall provide—

[(A) that any surcharge calculated under paragraph (3) may not be imposed by any interstate pipeline except in accordance with a method prescribed under subparagraph (B); and

[(B) one or more methods for imposing such surcharge on the rates and charges of such pipeline applicable to any volume of natural gas delivered, during the calendar period involved, for industrial use to any incrementally priced industrial facilities served directly by such interstate pipeline and to incrementally priced industrial facilities served indirectly through any other interstate pipeline or any local distribution company.

[(3) SURCHARGE.—

[(A) CALCULATION OF SURCHARGE.—Subject to subparagraphs (B) and (C), the amount of any surcharge imposed by any interstate pipeline under this subsection on deliveries of natural gas during the calendar period involved shall be based on the dollar amount in such pipeline's account at the beginning of such period and on the volume of natural gas delivered directly or indirectly by such pipeline during such period or a preceding calendar period to incrementally priced industrial facilities for industrial use with such adjustments as the Commission determines necessary to carry out the purposes of this title.

[(B) ELIMINATION OR REDUCTION OF SURCHARGE APPLICABLE TO A FACILITY.—The rule under section 201 (including any amendment under section 202 to such rule) shall provide one or more methods which have the effect of eliminating or reducing the amount of the surcharge determined under subparagraph (A) to be passed through under paragraph (2) with respect to volumes of natural gas to be delivered directly or indirectly to any incrementally priced industrial facility for industrial use to the extent that such surcharge, in the absence of such elimination or reduction, would cause the rates and charges, per million Btu's, paid for such volumes of natural gas by that incrementally priced industrial facility to exceed the appropriate alternative fuel cost.

[(C) INCREASE IN GENERAL SURCHARGE TO REFLECT AN ADJUSTMENT UNDER SUBPARAGRAPH (B).—The rule under sec-

tion 201 (including any amendment under section 202 to such rule) shall provide one or more methods by which, in any case in which the surcharge is eliminated or reduced under subparagraph (5) with respect to certain deliveries of natural gas, the interstate pipeline involved may recover from incrementally priced industrial facilities which are not subject to any surcharge elimination or reduction under subparagraph (B) the dollar amount which would have been so passed through if the elimination or reduction under subparagraph (B) had not occurred.

[(D) EXCEPTION.—The methods prescribed under subparagraphs (B) and (C) need not require—

[(i) elimination or reduction under subparagraph (B) of the surcharge with respect to any specific deliveries of natural gas; or

[(ii) the increase under subparagraph (C) of the surcharge generally applicable due to any adjustment under subparagraph (B),

if the Commission determines that to do so would be impracticable or unnecessary to carry out the purposes of this title.

[(4) LOCAL DISTRIBUTION COMPANY DIRECT PURCHASES.—In any case in which a local distribution company directly incurs any first sale acquisition cost subject to the passthrough requirements of this title under section 203 or otherwise directly incur any other cost subject to such requirements under sections 203(a)(8)(B), (9) or (10), such local distribution company shall, with respect to the natural gas involved, be treated for purposes of this title as if it were an interstate pipeline.

[(5) PIPELINES AND LOCAL DISTRIBUTION COMPANIES WITH MORE THAN ONE SOURCE OF NATURAL GAS.—The rule under section 201 (including any amendment under section 202 to such rule) shall prescribe one or more methods for determining, for purposes of paragraph (2)(B) and paragraph (3)(A), the volume of natural gas delivered indirectly by any interstate pipeline to any incrementally priced industrial facility through any other interstate pipeline or local distribution company for purposes of applying subsection (d)(2).

[(d) DEDUCTIONS FROM ACCOUNT.—

[(1) IN GENERAL.—Amounts passed through by any interstate pipeline by means of any surcharge under this section shall be deducted from such pipeline's account.

[(2) NORMAL ALLOCATION TO OCCUR WHERE BTU EQUIVALENCY IS REACHED FOR ALL FACILITIES SERVED BY A PIPELINE.—In any case in which the rates and charges to incrementally priced industrial facilities for natural gas delivered, directly or indirectly, by any interstate pipeline for industrial use to incrementally priced industrial facilities subject to the rule required under section 201 (including any amendment under section 202 to such rule), are not less than the appropriate alternative fuel cost, such rule shall prescribe one or more methods by which amounts in excess of that reasonably necessary to maintain such rates and charges applicable to such industrial facilities at the appropriate alternative fuel cost may be deducted from

such pipeline's account and may be allocated to the rates and charges of such interstate pipeline in any manner which would be permitted in the absence of this title.

[(e) DETERMINATION OF ALTERNATIVE FUEL COST.—

[(1) IN GENERAL.—Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designated by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel.

[(2) REDUCTION OF APPROPRIATE ALTERNATIVE FUEL COST ALLOWED.—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—

[(A) for any category of incrementally priced industrial facilities, subject to the rule required under section 201 (including any amendment under section 202 to such rule) located within any region and served by the same interstate pipeline; or

[(B) for any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;

to an amount not lower than the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residential, small commerical, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropriate alternative fuel cost were not so reduced.

[(f) DETERMINATION OF APPROPRIATE ACCOUNTING PERIOD.—The rule required to be prescribed in section 201 shall specify the appropriate calendar periods used for purposes of such rule (including any amendment under section 202 to such rule).

[(g) INCREMENTALLY PRICED INDUSTRIAL FACILITY DEFINED.—For purposes of this section, the term "incrementally priced industrial facility" means any industrial facility subject to the requirements of the rule under section 201 (including any amendment under section 202 to such rule).

[(h) INDUSTRIAL USE DEFINED.—For purposes of this section, the term "industrial use", when used with respect to natural gas, means the boiler fuel use of natural gas (as defined in section 201(c)(2)) and any other use defined, by rule, by the Commission as an industrial use.

[SEC. 205. LOCAL DISTRIBUTION COMPANY PASSTHROUGH REQUIREMENTS.

[(a) GENERAL RULE.—Any surcharge under this title, paid by any local distribution company with respect to natural gas which is indirectly delivered by any interstate pipeline to incrementally priced industrial facilities which are served by such local distribu-

tion company, shall be directly passed through to such industrial facilities.

[(b) PROHIBITION ON OFFSETTING MODIFICATIONS IN RATES AND CHARGES.—Any modification of the method of allocating costs to the rates and charges of such local distribution company in effect on the date of the enactment of this Act is prohibited if a court, in any action brought under section 504(b)(3), determines that such modification has the effect of creating any offset, in the rates and charges for natural gas applicable to any incrementally priced industrial facility served by such company, for the amount of any surcharge under this title paid by such local distribution company with respect to natural gas delivered by any interstate pipeline indirectly to that incrementally priced industrial facility.

[(c) SPECIAL ENFORCEMENT AUTHORITY OF ATTORNEY GENERAL.—In addition to such enforcement authority as may be available to the Commission or any person, the Attorney General may enforce the requirements of this subsection in accordance with the provisions of section 504(b)(3).

[(d) PREEMPTION OF STATE OR LOCAL LAW.—The requirements of this title shall preempt and supersede any provision of State or local law to the extent such provision of law would preclude the passthrough of any surcharge under this title or prevent the application of the requirements of this section.

[(e) STATE COMMISSION DEFINED.—For the purposes of this subsection, the term "State commission" means the State, political subdivision, or an agency of either, having jurisdiction with respect to the rates and charges of any local distribution company.

[SEC. 206. EXEMPTIONS.

[(a) SMALL EXISTING INDUSTRIAL BOILER FUEL USERS.—

[(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule required under section 201 shall not apply with respect to any boiler fuel use of natural gas by any industrial boiler fuel facility in existence on the date of the enactment of this Act if such use of natural gas by such facility does not exceed an average of 300 Mcf per day during any month of a base period determined appropriate by the Commission.

[(2) PERMANENT EXEMPTION.—

[(A) GENERAL RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing for the exemption of any small industrial boiler fuel facility from the rule required under section 201 (including any amendment under sectio 202 to such rule).

[(B) DEFINITION.—For purposes of this paragraph, the term "small industrial boiler fuel facility" means any industrial boiler fuel facility in existence on the date of enactment of this Act that had an average per day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977 which did not exceed the lesser of—

[(i) 300 Mcf; or

[(ii) such average daily rate of use during a month of peak use as the Commission determines in such rule is necessary to assure that the volume of natural gas estimated by the Commission to have been used for boiler fuel during calendar year 1977 by facilities which are exempted under this paragraph does not exceed 5 percent of the total volume of natural gas estimated by the Commission to have been used for boiler fuel transported by interstate pipelines and used during calendar year 1977 as a boiler fuel.

[(b) AGRICULTURAL USERS OF NATURAL GAS.—

[(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule prescribed under section 201 shall not apply to any facility to the extent of any agricultural use of natural gas.

[(2) EXEMPTION BY RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing for the exemption from the rule required under section 201 (including any amendment under section 202 to such rule) any facility with respect to any agricultural use of natural gas for which the Commission determines that an alternative fuel or feedstock is not—

[(A) economically practicable; or

[(B) reasonably available.

[(3) AGRICULTURAL USE DEFINED.—For purposes of this subsection, the term "agricultural use", when used with respect to natural gas, means the use of natural gas to the extent such use is—

[(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, or crop drying; or

[(B) as a process fuel for feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

[(c) SCHOOLS, HOSPITALS, AND CERTAIN OTHER FACILITIES.—The rule under section 201 (including any amendment to such rule under section 202) shall not apply to—

[(1) any school, hospital, or other similar institution;

[(2) the generation of electricity by any electric utility; or

[(3) to the extent provided by the Commission by rule, any qualifying cogenerator (as defined in section 3(18)B) of Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978).

[(d) OTHER EXEMPTIONS.—

[(1) IN GENERAL.—The Commission may, by rule or order, provide for the exemption, in whole or in part, of any other incrementally priced industrial facility or category thereof from the rule prescribed under section 201 (including any amendment under section 202 to such rule).

[(2) CONGRESSIONAL REVIEW.—Any rule which provides for any exemption under this subsection may take effect after the expiration of the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such rule has been submitted to each House of the Con-

gress, unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3), with respect to such rule.

[SEC. 207. TREATMENT OF CERTAIN IMPORTS.

[(a) CERTAIN LNG IMPORTS.—Except to the extent of a determination otherwise under subsection (c)(1), the provisions of section 203 (a)(4) shall not apply to the passthrough of the first sale acquisition costs of liquefied natural gas (or natural gas vaporized from liquefied natural gas) imported into the United States if—

[(1) the importation of such liquefied natural gas has been authorized under section 3 of the Natural Gas Act on or before May 1, 1978.

[(2) an application for such authority was pending under such section on such date; or

[(3) in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer has been made on or before such date.

[(b) CERTAIN NATURAL GAS IMPORTS (OTHER THAN LNG).—Subject to subsection (c)(2), the provisions of section 203(a)(5) shall only apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceeds both—

[(2) the maximum delivery obligations, for the month in which such delivery of such natural gas occurs, which is specified in contracts entered into on or before May 1, 1978, and in effect when such delivery occurs; and

[(2) the volume of natural gas imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977.

[(c) AUTHORITY WITH RESPECT TO INCREMENTAL PRICING OF NATURAL GAS OR LNG IMPORTS.—

[(1) LNG IMPORTS.—Subsection (a) (2) and (3) shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203(a)(4) shall apply with respect to such liquefied natural gas imports.

[(2) NATURAL GAS IMPORTS (OTHER THAN LNG).—The provisions of section 203(a)(5) shall apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar

year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203(a)(5) shall apply with respect to such natural gas imports.

[SEC. 208. ALASKA NATURAL GAS.

[In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

[(1) any portion of the first sale acquisition cost of such natural gas incurred by any interstate pipeline which is not required to be incrementally priced under this title, and

[(2) any amount incurred by any interstate pipeline, for transportation of such natural gas after delivery of such natural gas to such system,

shall be allocated to the rates and charges of such interstate pipeline in accordance with the general principles applicable on the date of the enactment of this Act for establishing rates in connection with the issuing of certificates under the Natural Gas Act for interstate pipelines.]

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Subtitle A—Emergency Authority

SEC. 301. DECLARATION OF EMERGENCY.

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SEC. 302. EMERGENCY PURCHASE AUTHORITY.

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SEC. 303. EMERGENCY ALLOCATION AUTHORITY.

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SEC. 304. MISCELLANEOUS PROVISIONS.

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Subtitle B—Other Authorities and Requirements

SEC. 311. AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION.

(a) COMMISSION APPROVAL OF TRANSPORTATION.—

(1) INTERSTATE PIPELINES.—

[(A) IN GENERAL.—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

[(i) any intrastate pipeline; and

[(ii) any local distribution company.]

(A) IN GENERAL.—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of any person.

(B) JUST AND REASONABLE RATES.—The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).

(2) INTRASTATE PIPELINES[.] *AND LOCAL DISTRIBUTION COMPANIES.*—

[(A) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

[(i) any interstate pipeline; and

[(ii) any local distribution company served by any interstate pipeline.]

(A) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline or local distribution company to transport natural gas on behalf of any person.

(B) RATES AND CHARGES.—

(i) MAXIMUM FAIR AND EQUITABLE PRICE.—The rates and charges of any intrastate pipeline *or local distribution company* with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable any may not excess an amount which is reasonably comparable to the rates and charges which interstate pipelines *or local distribution company* would be permitted to charge for providing similar transportation service.

(ii) COMMISSION RULE.—The Commission shall, by rule, establish the method for calculating an amount necessary to—

(I) reasonably compensate any intrastate pipeline *or local distribution company* for expenses incurred by the pipeline *or company* and associated with the providing of any gathering, treatment, processing, transportation, delivery, or similar service provided by such pipeline *or company* in connection with any transportation of natural gas authorized under subparagraph (A); and

(II) provide an opportunity for such pipeline *or company* to earn a reasonable profit on such services.

(b) COMMISSION APPROVAL OF SALES.—

[(1) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

[(A) any interstate pipeline; and

[(B) any local distribution company served by any interstate pipeline.]

(1) IN GENERAL.—The Commission may, by rule or order, authorize any pipeline or local distribution company to sell natural gas to any pipeline or local distribution company.

(2) Rates and charges.—

(A) MAXIMUM FAIR AND EQUITABLE PRICE.—Intrastate pipelines and local distribution companies.—The rates and charges of any intrastate pipeline *or local distribution*

company with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(j) such intrastate pipeline's *or local distribution company's* weighted average acquisition cost of natural gas;

(ii) an amount, computed in accordance with the rule prescribed under subpargraph (B); and

(iii) any adjustment permitted under subparagraph (C).

(B) COMMISSION RULE.—The Commission shall, by rule, establish the method for calculating an amount necessary to—

(i) reasonably compensate any intrastate pipeline *or local distribution company* for expenses incurred by the pipeline *or local distribution company* and associated with the providing of any gathering, treatment, processing, transportation *(including storage)* or delivery service provided by such pipeline in connection with any sale or natural gas authorized under paragraph (1); and

(ii) provide an opportunity for such pipeline *or local distribution company* to earn a reasonable profit on such services.

(C) ADJUSTMENTS.—

(i) APPLICATION.—This subparagraph shall apply in any case in which, in order to deliver any volume of natural gas pursuant to any sale authorized under paragraph (1), any intrastate pipeline *or local distribution company* acquires quantities of natural gas under any existing contract, if—

(I) such intrastate pipeline *or local distribution company* acquires any volume of natural gas under such contract in excess of that which such pipeline would otherwise have acquired; and

(II) the price paid for such additional volume of natural gas acquired under such contract is greater than such pipeline's *or local distribution company's* weighted average acquisition cost of natural gas, computed without regard to the acquisition of such additional volume of natural gas.

(ii) COMMISSION ADJUSTMENT.—In any case to which this subparagraph applies, the Commission shall permit an adjustment to the maximum fair and equitable price provided under subparagraph (A) to increase the revenue to the intrastate pipeline *or local distribution company* under such sale by an amount determined by the Commission to be adequate to offset the additional cost incurred by such pipeline *or local distribution company* due to any increase in such pipeline's *or local distribution company's* weighted average acquisition cost of natural gas.

(D) INTERSTATE PIPELINES.—The rates and charges of any interstate pipeline with respect to any sales authorized

under subsection (b)(1)(A) shall be just and reasonable (within the meaning of the Natural Gas Act).

(3) LIMITATION.—

(A) TWO-YEAR DURATION.—No authorization of any sale (or any extension thereof) under paragraph (1) may be for a period exceeding two years.

(B) EXTENSION.—Any authorization of any sale under paragraph (1), and any extension of any such authorization under this subparagraph, may be extended by the Commission if such extension satisfies the requirements of this subsection.

(4) ADEQUACY OF SERVICE TO [INTRASTATE] *EXISTING* CUSTOMERS.—Any sale authorized under paragraph (1) shall be subject to interruption to the extent that natural gas subject to such sale is required to enable the intrastate pipeline involved to provide adequate service to such [pipeline's] *seller's* customers at the time of such sale.

(5) PROCEDURAL REQUIREMENTS.—

(A) AFFIDAVIT.—Any application for authorization of any sale under paragraph (1) shall be accompanied by an affidavit filed by the [intrastate pipeline] *seller* involved and setting forth—

(i) the identity of the [interstate pipeline or local distribution company] *purchasing* involved;

(ii) each point of delivery of the natural gas from the [intrastate pipeline;] *seller;*

(iii) the estimated total and daily volumes of natural gas subject to such sale;

(iv) the price or prices of such volumes; and

(v) such other information as the Commission may, by rule, require.

(B) VERIFICATION OF COMPLIANCE.—Any application for authorization of any sale under paragraph (1) shall be accompanied by a statement by the [intrastate pipeline] *seller* involved verifying by oath or affirmation that such sale, if authorized, would comply with all requirements applicable to such sale under this subsection and all terms and conditions established, by rule or order, by the Commission and applicable to such sale.

(6) TERMINATION OF SALES.—

(A) HEARING.—Upon complaint of any interested person, or upon the Commission's own motion, the Commission shall, after affording an opportunity for oral presentation of views and arguments, terminate any sale authorized under paragraph (1) if the Commission determines—

(i) such termination is required to enable the [intrastate pipeline] *seller* involved to provide adequate service to the customers of such pipeline at the time of such sale;

(ii) such sale involves the sale of natural gas acquired by the [intrastate pipeline] *Seller* involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(iii) such sale violates any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(iv) such sale circumvents or violates any provision of this Act.

(B) SUSPENSION PENDING HEARING.—Prior to any hearing or determination required under subparagraph (A), upon complaint of any interested person or upon the Commission's own motion, the Commission may suspend any sale authorized under paragraph (1) if the Commission finds that it is likely that the determinations described in subparagraph (A) will be made following the hearing required under subparagraph (A).

(C) DETERMINATION.—The determination of whether any interruption of any sale authorized under paragraph (1) is required under subparagraph (A)(i) shall be made by the Commission without regard to the character of the use of natural gas by any customer of the [intrastate pipeline] *Seller* involved.

(D) STATE INTERVENTION.—Any interested State may intervene as a matter of right in any proceeding before the Commission relating to any determination under this section.

(7) DISAPPROVAL OF APPLICATION.—The Commission shall disapprove any application for authorization of any sale under paragraph (1) if the Commission determines—

(A) such sale would impair the ability of the [intrastate pipeline] *seller* involved to provide adequate service to its customers at the time of such sale (without regard to the character of the use of natural gas by such customer);

(B) such sale would involve the sale of natural gas acquired by the [intrastate pipeline] *seller* involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(C) such sale would violate any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; [or]

(D) such sale would circumvent or violate any provision of this Act[.]; *or*

(E) such sale would involve, either directly or indirectly, the sale of natural gas made available to the seller as a result of purchasing natural gas outside the state of receipt in a covered transaction as defined in section 601(d).

(8) PRIOR APPROVAL.—If an intrastate pipeline or local distribution company purchasing natural gas outside the state of receipt in a covered transaction as defined in section 601(d) wishes to make a sale under this subsection, it must file for and obtain prior express authorization from the Commission.

(9) DEFINITION OF SELLER.—For purposes of this subsection, the term "seller" means any person that sells gas under paragraph (b)(1).

(c) TERMS AND CONDITIONS.—Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

[15 U.S.C. 3371]

SEC. 312. ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS.

[(a) AUTHORIZATION OF ASSIGNMENTS.—The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.]

(a) AUTHORIZATION OF ASSIGNMENTS.—The Commission may, by rule or order, authorize a pipeline or local distribution company to assign, without compensation, to any other pipeline or local distribution company, all or any portion of the assignor's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) EFFECT OF AUTHORIZATION UNDER SUBSECTION (a).—For the effect of an authorization under subsection (a), see section 601 (relating to the coordination of this Act with the Natural Gas Act).

[(c) SURPLUS NATURAL GAS.—For purposes of this section, the term "surplus natural gas" means any natural gas—

(1) which is not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act;

(2) the first sale of which is subject to a maximum lawful price established under title I of this Act; and

(3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to received such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.]

(c) SURPLUS NATURAL GAS.—For purposes of this section, the term "surplus natural gas" means, with respect to any pipeline or local distribution company, any natural gas which exceeds the then current demands of such person for natural gas, as determined by—

(1) the Commission, or

(2) the State agency having regulatory jurisdiction over that person.

(d) EXTENT OF JURISDICTION.—Nothing in this Act shall be deemed to confer on the Commission jurisdiction under the Natural Gas Act over the purchase, sale, assignment, or transportation by an intrastate pipeline or local distribution company of natural gas which is not committed or dedicated to interstate commerce.

SEC. 313. EFFECT OF CERTAIN NATURAL GAS PRICES ON INDEFINITE PRICE ESCALATOR CLAUSES.

(a) HIGH-COST NATURAL GAS.—No price paid in any first sale of high-cost natural gas (as defined in section 107(c)) may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)) with respect to any first sale of any natural gas other than high-cost natural gas (gas defined in section 107(c)).

(b) OTHER TRANSACTIONS.—No price paid—

(1) in any sale authorized under section 302(a), or

(2) pursuant to any order issued under section 303 (b), (c), (d) or (g),

may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)).

SEC. 314. CLAUSES PROHIBITING CERTAIN SALES, TRANSPORTATION, AND COMMINGLING.

(a) GENERAL RULE.—Any provision of any contract for the [first] sale of natural gas is hereby declared against public policy and unenforceable with respect to any natural gas covered by this Act if such provision—

(1) prohibits the commingling of natural gas subject to such contract with natural gas subject to the jurisdiction of the Commission under the provisions of the Natural Gas Act;

(2) prohibits the sale of any natural gas subject to such contract to, or transportation of any such natural gas by, any person subject to the jurisdiction of the Commission under the Natural Gas Act, or otherwise prohibits the sale or transportation in interstate commerce (within the meaning of the Natural Gas Act) of natural gas subject to such contract; or

(3) terminates, or grants any party the option to terminate, any obligation under any such contract as a result of such commingling, sale, or transportation.

[(b) NATURAL GAS COVERED BY THIS ACT.—For purposes of subsection (a), the term "natural gas covered by this Act" means—

[(1) natural gas which is not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act;

[(2) natural gas, the sale in interstate commerce of which—

[(A) is authorized under section 302(a) or 311(b); or

[(B) is pursuant to an assignment under section 312(a); and

[(3) natural gas, the transportation in interstate commerce of which is—

[(A) pursuant to any order under section 302(c) or section 303 (b), (c), (d), or (h); or

[(B) authorized by the Commission under section 311(a).

(b) NATURAL GAS COVERED BY THIS ACT.—For purposes of subsection (a), the term "natural gas covered by this Act" means for any first sale contract, natural gas—

(1) which is not subject to the jurisdiction of the Commission under the Natural Gas Act by reason of section 601(a)(1) (A) or (B);

(2) the sale in interstate commerce of which—

(A) is authorized under section 302(a) or 311(b); or

(B) is pursuant to an assignment under section 312(a); or

(3) the transportation in interstate commerce which is—

(A) pursuant to any order under section 302(c) or section 303 (b), (c), (d), or (h),

(B) authorized by the Commission under section 311, or

(C) authoried under section 319 or 321.

[SEC. 315. CONTRACT DURATION; RIGHT OF FIRST REFUSAL; FILLING CONTRACTS AND AGREEMENTS.

[(a) CONTRACT DURATION.—

(1) GENERAL RULE.—The commission may, by rule or order, specify the minimum duration of any contract (other than any existing contract) for the purchase of natural gas to which section 601(a)(1) (A) or (B) is applicable. In no case may the minimum contract duration specified under this paragraph applicable to natural gas produced from any reservoir exceed 15 years, or, if less, the commercially producible life of such reservoir. The provisions of this paragraph shall not apply to contracts of natural gas subject to the requirements of paragraph (3).

[(2) NONDISCRIMINATORY APPLICATION.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission may not exercise the authority provided under paragraph (1) in a manner which—

[(i) provides an advantage to interstate pipelines by diverting supplies of natural gas to interstate pipelines and thereby denying adequate supplies of natural gas to intrastate pipelines; or

[(ii) otherwise discriminates between purchases by interstate pipelines and intrastate pipelines of natural gas.

[(B) SPECIAL CIRCUMSTANCES.—The Commission may vary any requirement established under paragraph (1) with respect to any contract by an interstate pipeline or intrastate pipeline to the extent necessary to respond to special circumstances.

[(3) CONTRACTS FOR PURCHASE OF OCS NATURAL GAS.—The Commission shall prescribe a rule which shall require that any first sale contract (other than any existing contract) for the purchase of natural gas which is produced from any reservoir on the Outer Continental Shelf and which is new natural gas (as defined in section 102(b)) or high-cost natural gas (as defined in section 107(c) (1), (2), (3), or (4)) shall be for a duration of not less than 15 years or, if less, the commercially producible life of the reservoir.

[(b) OFFERS, RIGHT OF FIRST REFUSAL.—

[(1) APPLICATION.—This subsection shall apply with respect to any natural gas which is committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which is—

[(A) high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4));

[(B) new natural gas (as defined in section 102(c)); or

[(C) natural gas produced from any new, onshore production well (as defined in section 103(c)).

This subsection shall not apply to any natural gas committed or dedicated to interstate commerce solely by reason of section 2(18)(A)(i).

[(2) OFFER OF SALE.—The Commission shall by rule, require that if natural gas subject to the requirements of this subsection is produced on or after the first day of the first month be-

ginning after the date of the enactment of this Act, a bona fide offer to sell such natural gas must be made to the person who, but for the provisions of section 601(a)(1)(B) (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas if such natural gas were sold (or any successor in interest to such person).

[(3) RIGHT OF FIRST REFUSAL.—The Commission shall, by rule, require that following—

[(A) the expiration or termination of any contract with respect to the first sale of natural gas subject to the requirements of this subsection to the person who, but for the provisions of section 601(a)(1)(B) (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas if such natural gas were sold (or any successor in interest to such person), or

[(B) any rejection of any bona fide offer, described in paragraph (2), to sell natural gas subject to the requirements of this subsection.

such person who would have been entitled to receive such natural gas shall be granted a right of first refusal of the first offer to sell such natural gas which subject to the exercise of any right of first refusal under this paragraph, has been substantially accepted in principle by another person in an arms-length transaction.

SEC. 315. FILING OF CONTRACTS AND AGREEMENTS.

[(c)] FILING OF CONTRACTS AND ANCILLARY AGREEMENTS.—] The Commission may, by rule or order, require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, together with all ancillary agreements and any existing contract applicable to such natural gas.

SEC. 316. IMPOSITION OF TAKE-OR-PAY LIMITS.

(a) GENERAL RULE.—In the case of any contract for the first sale of natural gas in effect on the date of enactment of this section and not exempted by section 121(f) (1), (2), or (3) from the wellhead price controls specified in subtitle A of title I, the purchaser may elect not to be obligated to take delivery of, or pay for, any volume in excess of the volumes specified in subsection (b) for the periods specified in subsection (c).

(b) VOLUMES.—For the purposes of subsection (a), the volumes shall be—

(1) 50 per centum of deliverability during the first year from the date of enactment of this section;

(2) 60 per centum of deliverability during the second year from the date of enactment of this section; and

(3) 70 per centum of deliverability during the third year from the date of enactment of this section.

(c) DURATION OF REDUCTION.—Any reduction of volumes pursuant to this section shall last for one year and may be extended for additional one-year periods, but in no event shall any reduction extend beyond the third year after enactment.

(d) NOTICE REQUIREMENT.—Any purchaser electing pursuant to this section to reduce the volumes purchased shall provide the seller with written notice no less than thirty days prior to the date on which delivery of such volumes is to be reduced. Such notice may be given in advance of the effective date of this section.

(e) RELEASE OF VOLUMES NOT TAKEN.—If the purchaser elects, pursuant to this section, to reduce the volumes purchased, the volumes not taken are released and may be sold to any other purchaser. Such volumes will constitute released take-or-pay gas and—

(1) shall not be subject to the abandonment requirements of the Natural Gas Act;

(2) shall not be committed or dedicated to interstate commerce under the Natural Gas Act; and

(3) shall not be subject to the provisions of this Act relating to the maximum lawful price for the first sale of natural gas.

(f) CONTRACT AND TRANSPORTATION OBLIGATIONS.—If the purchaser elects, pursuant to this section, to reduce the volumes purchased, the purchaser shall tender to the seller full and unconditional release from all duties and obligations in contract or in law with respect to volumes not taken under subsection (e). The purchaser, if a transporter of natural gas, shall tender transportation for such gas in accordance with the provisions of section 319.

(g) PURCHASES FROM AFFILIATES.—If a purchaser elects, pursuant to this section, to reduce the volumes purchased, the percentage reduction in purchases from a non-affiliated seller may not exceed any percentage reduction in deliveries from the purchaser's own production or from any affiliated seller.

(h) CASINGHEAD NATURAL GAS.—This section shall not apply to casinghead natural gas. The term "casinghead natural gas" as used herein shall mean gas produced from a well which, under the laws or rulings of the regulatory body having authority over the production of oil and gas of the jurisdiction in which such well is located, is classified as an oil well, and in the absence of any classification under such laws or rulings, such term shall mean gas which is produced in conjunction with crude oil from the same producing formation from a single well.

(i) DRAINAGE SITUATIONS.—This section shall not apply to the extent the production of the volume for which delivery is required to be taken would either cause drainage or be necessary in order to prevent drainage. For purposes of this section, the determination of whether delivery is required to be taken in order to prevent drainage will be determined by the drainage provision in the applicable gas sales contract. In the absence of a contractual provision, the determination will be made by the State or Federal agency having regulatory jurisdiction with respect to the production of natural gas.

(j) PREVENTION OF RESERVOIR DAMAGE.—This section shall not apply to the extent that reduction in takes would be likely to result in damage to the well or reservoir.

(k) OTHERWISE APPLICABLE LAW.—Any provision or rule of State or Federal law which conflicts with this section shall be inoperative after the date of enactment of this section to the extent that such provision or rule would otherwise apply to prevent the effective operation of this section.

(l) CONTRACTS COVERING MORE THAN ONE CATEGORY OF NATURAL GAS.—For purposes of this section, any contract covering two or more categories of natural gas for purposes of pricing the natural gas delivered under the contract shall be treated as separate contracts for each such category.

(m) EFFECT OF TAKE-OR-PAY REDUCTION.—Any election made pursuant to subsection (a) shall not be considered a renegotiation for purposes of section 121(f)(2).

(n) EFFECTIVE DATE.—The provisions of this section shall go into effect thirty days after the date of enactment.

SEC. 317. MARKET OUT PROVISION.

(a) GENERAL RULE OF APPLICABILITY.—The provisions of this section—

(1) shall apply to contracts in effect on the date of enactment of this section;

(2) shall apply to contracts for the first sale for resale of natural gas produced in the forty-eight contiguous states or from adjacent portions of the Outer Continental Shelf; and

(3) shall not apply to any contract for the first sale for resale, if such contract meets the requirements for an exemption under this paragraph.

(A) REQUIREMENTS.—To qualify for the exemption, the contract for the sale for resale of natural gas must contain a clause that—

(i) may be exercised at the option of the purchaser,

(ii) enables the purchaser to adjust the price of natural gas subject to the contract, and

(iii) does not prohibit the purchaser from adjusting the price to a price equal to the applicable price indicator.

(B) DISQUALIFICATION.—The exemption shall not apply if the exercise of the clause is not available for exercise by the purchaser on the first day of the second full month after the date of enactment of this section, or if the producer provides notice to the purchaser within thirty days after the enactment of this section that the clause does not satisfy the requirements set forth in paragraph (A).

(b) CONTRACTS COVERING MORE THAN ONE CATEGORY OF NATURAL GAS.—For purposes of this section, any contract covering two or more categories of natural gas for purposes of pricing the natural gas delivered under the contract shall be treated as two separate contracts if one or more categories is priced as stated in 131(b)(3) and one or more categories is priced as stated in 131(c)(3). In such event, one contract shall be considered to include all categories priced as stated in 131(b)(3) and the other shall be considered to include all categories priced as stated in 131(c)(3).

(c) EFFECTIVE DATES.—The authority provided by this section shall last twelve months. The authority shall begin—

(1) the first day of the twentieth full month after enactment of this section for natural gas subject to section 131(b), and

(2) the first day of the forty-fourth month after enactment of this section for natural gas subject to section 131(c).

(d) EXERCISE OF AUTHORITY.—Either party to a contract for the purchase of natural gas which is subject to this section shall have the right to terminate the contract under the following conditions:

(1) the party wishing to terminate the contract must give notice to the other party at least sixty days in advance that the contract is to be terminated;

(2) the party giving notice of termination does not materially breach the contract at anytime during the notice period; and

(3) the party giving notice of termination must offer to the other party a full and unconditional release from all future duties and obligations in contract or in law relating to the contract, which release is effective upon termination of the notice period, or upon termination of any deliveries required by subsection (e) under the contract, whichever is later.

(e) OBLIGATIONS OF PARTIES UPON TERMINATION.—Neither party to a contract terminated pursuant to this section shall have an obligation to perform any act because of the contract after the effective date of termination of the contract, except as provided herein—

(1) EFFECT IF SELLER MARKETS OUT.—If the seller terminates the contract by authority granted under this section the purchaser may compel continued performance by such seller in accordance with the provisions of the terminated contract at a price equal to the free market price indicator pursuant to subsection 131(f)(2) until such date as such seller obtains a new purchaser unaffiliated with such seller who is capable of receiving gas under the terminated contract.

(2) EFFECT IF PURCHASER MARKETS OUT.—If the purchaser terminates the contract by authority granted under this section, the seller may compel continued performance under the contract, except that the price paid under such contract shall be equal to the free market price indicator pursuant to subsection 131(f)(2), until such date as the seller obtains a new purchaser unaffiliated with such seller who is capable of receiving the gas subject to the terminated contract, or one year after the date of termination, whichever is earlier.

(3) RESTITUTION.—Either party to a contract terminated under this section that has received a good or service before the effective date of the contract termination shall have a duty to pay for that good or service as provided for in the contract. A party that has received payment for a good or service that was not provided before the effective date of contract termination shall have a duty to make restitution of the payment in cash or in kind in accordance with the provision of the contract.

(f) LIMITATION ON USE OF GAS SUBJECT TO THIS SECTION.--Notwithstanding the requirements of subsection (e), if the seller terminates a contract pursuant to the authority of this section, or if the purchaser terminates a contract with an affiliated entity pursuant to the authority of this section, the gas subject to such contract may not be sold between affiliated entities or used by a seller for such seller company's use prior to the date on which such contract, by its terms, would have expired.

(g) ENHANCED RECOVERY REQUIREMENT.—Notwithstanding the requirements of subsection (e), if the seller terminates a contract for the sale of gas subject to section 104 pursuant to the authority of

this section, the new contract for the sale of gas which was subject to the terminated contract must contain an express provision to the effect that the seller will use reasonable, good faith efforts, where technically and financially feasible, to enhance the recovery of such gas.

SEC. 318. RIGHT OF FIRST REFUSAL AND RIGHT OF FIRST OFFER.

(a) PURCHASER'S RIGHT OF FIRST REFUSAL.—

(1) GENERAL RULE.—Except as provided in subsection (b), if either party terminates a contract pursuant to the authority of section 131 or 317, the purchaser that was a party to the terminated contract shall have a right of first refusal for gas subject to such contract, if such purchaser offers to purchase such gas at a price equal to or greater than the applicable market price indicator.

(2) GAS SUBJECT TO REQUIREMENT.—The right of first refusal shall apply to the volumes of gas coextensive with the terminated contract.

(3) REQUIREMENTS FOR OFFER.—

(A) If the seller terminates the contract, the purchaser from such seller shall have thirty days after receipt of the notice from the seller required by subsection 317(d)(1) to make an offer to purchase at a price equal to or greater than the applicable price indicator.

(B) If the purchaser terminates the contract, and if such purchaser wishes to retain a right of first refusal, the purchaser must, at the time of notice of intent to terminate the contract, make the seller an offer to purchase at a price equal to or greater than the applicable price indicator.

(4) ACTION ON OFFER.—An offer by such purchaser pursuant to paragraphs (3) (A) or (B) to purchase must be accepted or rejected by the producer within thirty days of receipt.

(5) OPPORTUNITY TO MATCH TERMS OF SUBSEQUENT SALE.—If such purchaser makes the seller an offer to purchase pursuant to the requirements of this section, and if the seller does not accept that offer and thereafter proposes to sell the gas, the purchaser shall have an opportunity to match the terms of the subsequent sale. The purchaser shall be required to match an offer with comparable volumes and terms and conditions, as well as with price. If the purchaser does not exercise its right to match the terms within fifteen days of receipt of notice from the seller of an intent to sell the gas, the purchaser may sell such gas to any unaffiliated purchaser.

(b) PURCHASER'S RIGHT OF FIRST OFFER.—

(1) GENERAL RULE.—If a purchaser terminates a contract pursuant to the authority of section 317 or if a seller exercises the option to terminate the contract pursuant to the authority of section 131(a)(3)(B) for natural gas subject to section 121 (a), (b), or (c), or section 107(c)(5), the purchaser that was a party to the terminated contract shall have a right of first offer for gas subject to such contract.

(2) TERMS AND CONDITIONS.—Within fifteen days of receipt of notice of termination of the contract by the purchaser pursuant to the authority of section 317, or within fifteen days of the ex-

ercise by the seller of the option to terminate the contract pursuant to the authority of section 131(a)(3)(B), the seller shall nominate volumes of gas available for purchase in a subsequent contract. Such nomination shall apply to volumes of gas coextensive with the terminated contract, and shall include terms and conditions regarding—

(A) duration of the contract, and

(B) volumes to be delivered under the contract, including terms and conditions respecting delivery and take or pay obligations.

(3) REQUIREMENTS FOR FIRST OFFER.—Within fifteen days of receipt of such nomination from the seller, the purchaser may make an offer to purchase such gas at a price equal to or greater than the applicable price indicator in effect at the time of notice to terminate the contract, in accordance with the terms nominated by the seller.

(4) ACTION ON FIRST OFFER.—An offer by such purchaser pursuant to paragraph (3) to purchase must be accepted or rejected by the seller within thirty days of receipt of such offer.

(5) SUBSEQUENT SALE.—In the first contract for sale of gas nominated under paragraph (2), the seller may not sell the gas for which a first offer has been made under paragraph (3) to another purchaser for any amount equal to or less than the price specified in the first offer or under terms and conditions other than those nominated by such seller, except under the procedures specified in paragraph (6).

(6) ALTERATION OF TERMS AND CONDITIONS.—If, after receipt of a first offer to purchase gas under paragraph (3), the seller desires to alter the terms and conditions specified in the nomination under paragraph (2), such seller shall give notice of the alteration to the purchaser, and the requirements of paragraph (3), (4), and (5) shall apply to the gas subject to such altered nomination.

SEC. 319. TRANSPORTATION OBLIGATION FOR CERTAIN NATURAL GAS.

(a) IN GENERAL.—In the event that a contract is terminated under section 131 or 317, a pipeline purchaser that was a party to the terminated contract shall have an obligation to transport natural gas for a seller that was a party to the terminated contract. Any purchaser electing to reduce the volumes taken under section 316, which results in "released take-or-pay gas" under section 316(e), shall have an obligation to transport such gas. The obligation of the pipeline purchaser shall not exceed on an annual basis the largest volume delivered under the contract during any twelve consecutive months in the thirty-six months prior to its termination.

(b) LIMITATION OF OBLIGATION.—The Commission, or in the case of an intrastate pipeline purchaser the State agency with jurisdiction over such pipeline purchaser, upon application by the pipeline purchaser and after opportunity for hearing, may order a limitation of the obligation of the pipeline purchaser under this section if compliance with the obligation would require construction of additional facilities other than minor facilities as defined in section 321 or would impair the ability of the pipeline purchaser to render adequate service to its existing customers.

(c) CONSIDERATION.—The consideration for any transportation provided under this section shall include an incentive allowance of $0.05 per million Btu's plus the just and reasonable rate, or the fair and equitable rate, for such transportation, as established by the Commission or appropriate State regulatory body, unless the Commission or appropriate State regulatory body has established by rule a different incentive allowance for such transportation. No amount of such incentive allowance shall be required to be credited and flowed back to the customers of such pipeline. Further, no amount of such incentive allowance shall be used or considered in establishing rates to be charged by the pipeline.

SEC. 320. EFFECT OF FREE MARKET PRICE INDICATOR.

(a) PERMANENT REFERENCE FOR CERTAIN CONTRACTS.—The price established by the free market price indicator in effect on the first day of the forty-fourth full month after enactment of this section—

(1) shall operate as a permanent reference for any area rate clause as defined in this section, and

(2) shall be the reference price for natural gas under any contract subject to an election under section 131(c) of this Act, if such price would otherwise be below the price level established by the free market price indicator on that date.

(b) DEFINITION OF AREA RATE CLAUSE.—An area rate clause is a clause which establishes a contract price for the sale of gas by reference to a federally established rate, including, without way of limitation, a clause referencing a just and reasonable rate established by order of the Commission.

(c) OTHER REFERENCE PRICES.—For purposes of an area rate clause, any maximum lawful price under subtitle A, or price established pursuant to section 131 of this Act, shall be deemed to be a just and reasonable rate established by order of the Commission.

SEC. 321. CONTRACT CARRIER AUTHORIZATION.

(a) GENERAL INTERSTATE PIPELINE RULE.— An interstate pipeline shall transport natural gas under this section if—

(1) a seller or a purchaser of natural gas requests an interstate pipeline to transport natural gas,

(2) such pipeline has available capacity, and

(3) the seller or purchaser certifies that—

(A) at least forty-five days in advance it notified the interstate pipeline currently serving the person for whom such transportation service is being sought of its intent to request an authorization pursuant to this section,

(B) it attempted, in good faith, to negotiate a continuation of current service, if any, by such pipeline, and

(C) it has been unable to conclude any other satisfactory agreement for the transportation of such gas.

(b) GENERAL INTRASTATE PIPELINE RULE.—

(1) APPLICABILITY.—The Commission, after consultation with the Governor of the affected State, shall order an intrastate pipeline to transport natual gas in accordance with this section if—

(A) a seller or a purchaser of natural gas requests an intrastate pipeline to transport natural gas,

(B) such request is received by such intrastate pipeline and filed with the State agency, and that State agency has failed to take final administrative action within a period of ninety days after receipt of such request,

(C) such pipeline has available capacity, and

(D) the seller or purchaser certifies that—

(i) at least forty-five days in advance it notified the intrastate pipeline currently serving the person for whom such transportation service is being sought of its intent to request an authorization pursuant to this section,

(ii) it attempted, in good faith, to negotiate a continuation of current service, if any, by such pipeline, and

(iii) it has been unable to conclude any other satisfactory agreement for the transportation of such gas.

(2) EXEMPTION.—This subsection shall not apply if a State agency certifies that—

(A) it has authority to require an intrastate pipeline with available capacity to transport natural gas for a seller or a purchaser of natural gas requesting such transportation, and

(B) pursuant to such authority, it is required to take final administrative action within a time certain.

(3) JURISDICTION OF THE COMMISSION.—No intrastate pipeline shall be subject to the jurisdiction of the Commission under the Natural Gas Act by virtue of transporting natural gas pursuant to the requirements of this subsection. The Commission shall—

(A) establish an incentive allowance for contract carriage compensation under subsection (f) for an intrastate pipeline ordered by the Commission to transport natural gas under subsection (b), if no incentive allowance has been established pursuant to State law, or

(B) establish a fair and equitable rate for transportation by an intrastate pipeline, if no rate has been established pursuant to State law.

(c) GENERAL LOCAL DISTRIBUTION COMPANY RULE.—

(1) APPLICABILITY.—The Commission, after consultation with the Governor of the affected State, shall order a local distribution company to transport natural gas in accordance with this section if—

(A) a seller or a purchaser of natural gas requests a local distribution company to transport natural gas,

(B) such request is received by the local distribution company and filed with the State agency, and that State agency has failed to take administrative action within a period of ninety days after receipt of such request.

(C) such local distribution company has available capacity, and

(D) the seller or purchaser certifies that—

(i) at least forty-five days in advance it notified the pipeline or local distribution company currently serving the person for whom such transportation service is

being sought of its intent to request an authorization pursuant to this section,

(ii) it attempted, in good faith, to negotiate a continuation of current service, if any, by such pipeline or local distribution company, and

(iii) it has been unable to conclude any other satisfactory agreement for the transportation of such gas.

(2) EXEMPTION.—This section shall not apply if a State agency certifies that—

(A) it has authority to require a local seller or a purchaser of natural gas requesting such transportation, and

(B) pursuant to such authority, it is required to take final administrative action within a time certain.

(3) JURISDICTION OF THE COMMISSION.—No local distribution company shall be subject to the jurisdiction of the Commission by virtue or transporting natural gas pursuant to the requirements of this subsection. The Commission shall—

(A) establish an incentive allowance for contract carriage compensation under subsection (f) for a local distribution company ordered by the Commission to transport natural gas under subsection (c), if no incentive allowance has been established pursuant to state law, or

(B) establish a fair and equitable rate for transportation by a local distribution company, if no rate has been established pursuant to State law.

(4) RESTRICTION.—

(A) No individual facility served as of the date of enactment of this Act, or historically served by a local distribution company, may receive gas transported under this section, except according to the procedures in this subsection.

(B) For the purposes of this paragraph, any individual facility that—

(i) has received gas from a local distribution company since January 1, 1980,

(ii) is not receiving gas as of the date of enactment, and

(iii) has service facilities physically connected to the local distribution company, shall be deemed to have been historically served by such company.

(C) The prohibition under supbaragraph (A) shall not apply—

(i) to a request for transportation service to an individual facility served as of the date of enactment of this Act, or historically served, by a local distribution company to the extent that the volume of natural gas to be transported exceeds the average annual deliveries to such facility within four years prior to the date of enactment.

(ii) to gas transported to serve facilities not in existence as of the date of enacment,

(iii) to gas transported to serve facilities which—

(aa) have not used gas for three years prior to date of application for transportation service, or

(bb) have not used gas for four years, in the case of facilities historically served by a local distribution company,

(iv) to the extent that the individual facility has a direct purchase contract with an interstate natural gas pipeline, or

(v) to a request for transportation service if such request has the concurrence of the local distribution company and the State agency.

(5) GENERAL EXCEPTION.—Notwithstanding any other provision of this subsection, the Commission may, by order, approve a request for transportation service in accordance with this section if it finds that—

(A) a State agency having regulatory jurisdiction over local distribution companies has taken final administrative action on a request for transportation service pursuant to this section, and such action is no longer subject to appeal pursuant to State law, and

(B) the final action by the State agency did not result in transportation service because such action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(d) AVAILABLE CAPACITY.—

(1) REBUTTABLE PRESUMPTION.—A pipeline or a local distribution company shall be presumed to have available capacity unless the Commission determines that such pipeline's or local distribution company's total capacity is necessary to render adequate service to its existing customers.

(2) PARTIAL CAPACITY.—If the Commission finds that a pipeline or a local distribution company has available capacity to transport only a portion of the natural gas requested to be transported under this section, the Commission shall require such pipeline to transport such natural gas to the extent of such available capacity in accordance with this section.

(e) PROTECTION FOR HIGH PRIORITY USERS.—

(1) GENERAL RULE FOR EXISTING CUSTOMERS.—Any pipeline transporting natural gas pursuant to this section shall continue to serve its existing customers, in preference to its contract carriage customers, except as provided herein.

(2) ESTABLISHMENT OF CONTRACT CARRIAGE SERVICE PRIORITY.—Any contract carriage customer may seek to establish a contract carriage service priority in order to assure that capacity is available for the existing high-priority users of the gas transported on behalf of such customer.

(A) FILING REQUIREMENT.—The contract carriage customer seeking to establish a contract carriage service priority shall file such information as may be required by the Commission in order to establish the volume of natural gas to be transported by the pipeline in order to meet the current requirements of the existing high-priority users of the gas transported on behalf of such customer. The contract carriage customer seeking to establish the contract carriage service priority shall file such information at the same time

it files the request for authorization pursuant to subsection (k)(1).

(B) COMMISSION DETERMINATION.—The Commission shall determine the volume of natural gas which is necessary to meet the current requirements of the existing high-priority users of the gas transported on behalf of any contract carriage customer, taking into consideration all of the sources of supply of such contract carriage customer. Such volume shall constitute the contract carriage service priority.

(3) APPLICATION OF PRIORITY.—In the event that the transporting pipeline later develops insufficient capacity to satisfy the transportation needs of both its existing customers and its contract carriage customers, the Commission shall, by rule or order, require the pipeline to transport the contract carriage service priority volume, in preference to the volume necessary to meet the requirements of customers who are not high-priority users of such pipeline.

(4) INSUFFICIENT SUPPLY.—Nothing in this section shall affect—

(A) the priority of service afforded users under Title IV of this Act of the pipeline's gas supply that is subject to the pipeline's curtailment plan, or

(B) the priority of service established pursuant to State law for any intrastate pipeline.

(f) CONTRACT CARRIAGE COMPENSATION.—

(1) GENERAL RULE.—Compensation for transportation service provided under this section shall be determined according to this subsection.

(2) VOLUNTARY TRANSPORTATION ALLOWANCE.—Any pipeline or local distribution company that voluntarily agrees to transport natural gas under this section shall be permitted to charge an incentive allowance of up to $0.05 per million Btu's (in excess of the just and reasonable rate, or the fair and equitable rate, for such transportation as established by the Commission) unless and until the Commission determines by rule or order that some other amount is appropriate as an incentive in the public interest. The Commission shall not require any portion of such incentive allowance to be credited and flowed back to the customers of such pipeline or local distribution company. Further, no amount of such incentive allowance shall be used or considered in establishing rates to be charged by the pipeline.

(3) REQUIRED CONTRACT CARRIAGE COMPENSATION ALLOWANCE.—Any pipeline or local distribution company that protests the transportation of natural gas under this section and is subsequently ordered to transport such natural gas by rule or order of the Commission shall be allowed to charge an appropriate incentive allowance, to be determined by the Commission. The allowance may exceed the just and reasonable rate, or the fair and equitable rate, for such transportation by up to $0.05 per million Btu's if, in the judgment of the Commission, the protest was a reasonable effort to protect the pipeline's or local distribution company's ability to continue to render adequate service to its existing customers. The Commission shall establish criteria to be used in determining the amount of the incentive allow-

ance to be granted. The Commission shall not require any portion of such incentive allowance to be credited and flowed back to the customers of such pipeline or local distribution company. Further, no amount of such incentive allowance shall be used or considered in establishing rates to be charged by the pipeline or local distribution company.

(4) TRANSPORTATION BY MULTIPLE PIPELINE OR LOCAL DISTRIBUTION COMPANIES.—If transportation service is provided under this section by more than one pipeline or local distribution company, the Commission may allocate the incentive allowance provided for in subsection (2) or (3) among the parties providing transportation service under this section.

(5) INCENTIVE ALLOWANCE LIMITATION.—Notwithstanding any other provision of this section, any pipeline that transports natural gas owned or produced by an affiliate of such pipeline may not receive an incentive allowance for such transportation service. Similarly, any local distribution company that transports natural gas owned or produced by an affiliate of such local distribution company may not receive an incentive allowance for such transportation service.

(6) CONSUMER PROTECTION RATE DESIGNS.—Within ninety days after enactment the Commission shall promulgate regulations which require that the just and reasonable rates for the transportation service provided in accordance with this section include an equitable percentage of the fixed costs of the transporting pipeline in order to protect all classes of customers, but particularly residential and commercial customers of the transporting pipeline. Such regulations shall be designed to require rates for transportation service provided in accordance with this section that are comparable to transportation charges included in the price of gas sold to pipeline customers receiving comparable service.

(g) CONSTRUCTION OF NEW FACILITIES.—Upon request of a seller or purchaser of natural gas requesting transportation of natural gas under this section, the Commission may order a pipeline or local distribution company to construct and operate minor facilities necessary for the transportation of natural gas under this section. The person requesting transportation service shall pay the cost of construction and operation of such facilities.

(h) SERVICE OBLIGATION.—If a customer of an interstate pipeline is a purchaser of natural gas transported pursuant to this section, the service obligation of that pipeline to such customer pursuant to the Natural Gas Act shall be reduced, at the option of the pipeline, to the extent the volumes purchased by the customer reduce the customer's requirements under its contract with the interstate pipeline.

(i) TERMINATION.—The Commission may, by order, reduce or terminate the transportation service provided for under this section upon the filing of a petition by any party to a transportation service agreement if the Commission determines that, because of unforeseen circumstances, the volumes of such natural gas supplied or delivered do not substantially comply with the terms of the authorization under this section.

(j) REGULATIONS.—The Commission shall issue final regulations implementing the requirements of this section within one hundred

and twenty days of enactment of this section. The regulations shall—

(1) provide for self-implementation of transportation requested under this section in the absence of any protest; and

(2) require semiannual certification by each interstate pipeline of its total capacity, its available capacity, and the amount of natural gas actually taken by its existing customers in months of peak natural gas usage during the five years immediately preceding.

(k) PROCEDURE.—

(1) All requests for transportation service under this section shall be filed with the Commission, which shall cause the same to be published in the Federal Register and forwarded to the appropriate state agency as soon as practicable.

(2) Any transportation service request may be protested by the pipeline or local distribution company to which it is addressed or by any other interested person, or any State agency, on the grounds that--

(A) the request, if implemented—

(i) would render the pipeline or local distribution company requested to provide the transportation service unable to render adequate service to its existing customers, or

(ii) would render the pipeline or local distribution company presently serving the person on whose behalf such transportation is being sought unable to render adequate service to its remaining customers,

(B) the seller or purchaser did not meet the notice requirement contained in subsection (a), (b) or (c), or

(C) the seller or purchaser did not negotiate in good faith as required by subsection (a), (b) or (c).

Such protest must be filed within thirty days after publication of the request for transportation service.

(3) At the expiration of the thirty-day protest period provided in paragraph (2), if no protest has been received, the transportation service shall be implemented pursuant to subsection (j)(1).

(4) The Commission shall hear and decide protests filed hereunder as expeditiously as practicable, giving priority to such proceedings; and shall enter its order with respect to any protest within ninety days after the date the protest is filed, extending the entry of its order beyond such nine-day period only for good cause shown. If Commission cannot enter its order within such ninety-day period, in the absence of a stay entered to avoid irreparable injury, requests for transportation service shall be implemented at the end of such ninety-day period.

(5) Commission proceedings and orders with respect to any protested request shall be limited to consideration of and decision on the specific grounds for protest specified in this section and asserted in the protest.

(l) DEFINITIONS.—For purposes of this section, the term—

(1) "contract carriage customer" means any person receiving transportation service under subsection (a);

(2) "existing customer" means any person served by a pipeline other than a contract carriage customer;

(3) "high-priority user" includes any high-priority user, any essential agricultural use, and any essential industrial process and feedstock use, as defined in Title IV;

(4) "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisidication of the Commission under the Natural Gas Act, except a local distribution company;

(5) "minor facilities" means those facilities, including sales taps, which the Commission determines by rule or order do not involve substantial costs;

(6) "render adequate service to its existing customers" means the capacity to transport the volume of natural gas necessary to meet both the present requirements of existing customers and the reasonably foreseeable requirements of such customers as determined by the Commission. The Commission, in making the determination of capacity necessary for a pipeline or local distribution company to render adequate service to its existing customers, shall require the pipeline or local distribution company to specify the amount of natural gas actually used by its existing customers in months of peak natural gas usage during the five years immediatley preceding;

(7) "State agency means an agency or instrumentality of a State or political subdivision thereof, including a municipal utility, with authority to fix, modify, approve, or disapprove rates for the transportation or sale of natural gas; and

(8) "total capacity" means that capacity to transport natural gas that can be made available consistent with accepted engineering principles to deliver a given volume of natural gas to a given location through all means, including but not limited to, direct haul, storage capacity, compression, flow reversal or transportation by displacement.

TITLE IV—NATURAL GAS CURTAILMENT POLICIES

SEC. 401. NATURAL GAS FOR ESSENTIAL AGRICULTURAL USES.

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SEC. 402. NATURAL GAS FOR ESSENTIAL INDUSTRIAL PROCESS AND FEEDSTOCK USES.

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SEC. 403. ESTABLISHMENT AND IMPLEMENTATION OF PRIORITIES.

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SEC. 404. LIMITATION ON REVOKING OR AMENDING CERTAIN PRE-1969 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

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TITLE V—ADMINISTRATRION, ENFORCEMENT, AND REVIEW

SEC. 501. GENERAL RULEMAKING AUTHORITY.

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SEC. 502. ADMINISTRATIVE PROCEDURE.

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SEC. 503. DETERMINATIONS FOR QUALIFYING UNDER CERTAIN CATEGORIES OF NATURAL GAS.

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SEC. 504. ENFORCEMENT.

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SEC. 505. INTERVENTION.

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SEC. 506. JUDICIAL REVIEW.

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[SEC. 507. CONGRESSIONAL REVIEW.

[(a) APPLICATION.—This section applies with respect to—

[(1) any disapproval by concurrent resolution of a Presidential reimposition of maximum lawful prices under section 122;

[(2) any congressional reimposition by concurrent resolution of maximum lawful prices under section 122; and

[(3) any resolution of disapproval relating to incremental pricing under section 202(c) or 206(d)(2).

[(b) DETERMINATION OF CALENDAR DAYS OF CONTINUOUS SESSION.—In determining calendar days of continuous session for purposes of provisions of this Act providing for disapproval under this section—

[(1) continuity of session is broken only by an adjournment of Congress sine die; and

[(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-calendar-day period involved.

[If both Houses are not in session on the day any submittal subject to disapproval is received by the appropriate officers of each House, for purposes of this section such submittal shall be deemed to have been submitted on the first succeeding day on which both Houses are in session. If both Houses of the Congress do not receive a submittal on the same day, it shall not be considered to be received by either House until the day on which both Houses receive it.

[(c) RESOLUTION.—For purposes of this section, and sections 122, 202, and 206—

[(1) CONCURRENT RESOLUTION DISAPPROVING REIMPOSITION OF PRICE CEILINGS.—The term "concurrent resolution of disapproval", when used with respect to reimposition of maximum lawful prices under section 122(c)(1), means a resolution the matter after the resolving clause of which is as follows: "That the Congress does not approve of the reimposition of maximum lawful prices for first sales of natural gas under section 122(c)(1) of the Natural Gas Policy Act of 1978 pursuant to the transmittal by the President to the Congress on , 19 .", the blank spaces being filled with the appropriate date.

[(2) CONCURRENT RESOLUTION EFFECTING REIMPOSITION OF PRICE CEILINGS.—The term "concurrent resolution", when used with respect to reimposition of maximum lawful prices under section 122(c)(2), means a resolution the matter after the resolving clause of which is as follows: That the Congress favors reimposition of maximum lawful prices for first sales of natural gas as provided for under section 122(c)(2) of the Natural Gas Policy Act of 1978.".

[(3) RESOLUTION OF DISAPPROVAL OF INCREMENTAL PRICING ACTION.—The term "resolution of disapproval", when used with respect to incremental pricing rules, means a resolution the matter after the resolving clause of which is as follows: "That the does not approve the proposed rule under section of the Natural Gas Policy Act of 1978 (relating to incremental pricing of natural gas) a copy of which was transmitted to the Congress on .", the first blank being filled with the House in which such resolution is introduced, the second blank spacing being filled with the section under which proposed rule was issued, and the following blank spaces being filled with the appropriate date. For purposes of this paragraph, the term "rule" means any rule or any amendment thereto (other than a technical or clerical amendment).

[(d) EXPEDITED PROCEDURE.—

[(1) CONGRESSIONAL RULEMAKING POWER.—This subsection is enacted by Congress—

[(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

[(B) With full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

[(2) REFERRAL.—A resolution described by paragraph (2) once introduced with respect to any submittal shall immediately be referred to a committee (and all resolutions with respect to the same submittal shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

[(3) DISCHARGE.—

[(A) IN GENERAL.—If the committee to which a resolution with respect to a submittal has been referred has not reported at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolutions with respect to such submittal which has been referred to the committee.

[(B) MOTIONS.—A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same submittal) and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

[(C) RENEWAL.—If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same submittal.

[(4) FLOOR CONSIDERATION.—

[(A) MOTION TO CONSIDER.—When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) DEBATE AND CONSIDERATION.—Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6) DETERMINATION ON MOTIONS.—

(A) MOTIONS TO POSTPONE OR TO PROCEED TO OTHER BUSINESS.—Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business shall be decided without debate.

(B) APPEALS FROM THE DECISION OF THE CHAIR.—Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) SUBSEQUENT ACTION.—Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a submittal, then it shall not be in order to consider in the House any other resolution with respect to the same such submittal.

SEC. 508. TECHNICAL PROVISIONS.

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TITLE VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

SEC. 601. COORDINATION WITH THE NATURAL GAS ACT.

(a) JURISDICTION OF THE COMMISSION UNDER THE NATURAL GAS ACT.—

(1) SALES.—

(A) NATURAL GAS NOT COMMITTED OR DEDICATED.—For purposes of section 1(b) of the Natural Gas Act, effective on the first day of the first month beginning after the date of the enactment of this Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of the day before the date of enactment of this Act solely by reason of any first sale of such natural gas.

(B) COMMITTED OR DEDICATED NATURAL GAS.—Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, for purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act and which is—

(i) high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4) of this Act);

(ii) new natural gas (as defined in section 102(c) of this Act;) **[**or**]**

(iii) natural gas produced from any new, onshore production well (as defined in section 103(c) of this Act)**[**.**]**;

(iv) natural gas exempted from the operation of subtitle A of title I pursuant to section 121(f);

(v) natural gas that was subject to a contract that expired, lapsed, was terminated pursuant to its own terms, or was terminated pursuant to the provisions of section 317 of this Act, except as provided under subsection 131(b) or 131(c); or

(vi) natural gas exempted from the operation of title I pursuant to section 121(g).

(C) AUTHORIZED SALES OR ASSIGNMENTS.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

[(i) authorized under section 302(a) or 311(b) or**]**

(i) authorized under section 302(a), 311(b), or 321; or

(D) NATURAL-GAS COMPANY.—For purposes of the Natural Gas Act, the term "natural-gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of

the Commission do not apply to such sale solely by reason of subparagraph (A), (B), or (C) of this paragraph.

(E) ALASKAN NATURAL GAS.—Subparagraph (B) (ii) and (iii) shall not apply with respect to natural gas produced from the Prudhoe Bay unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(2) TRANSPORTATION.—

(A) JURISDICTION OF THE COMMISSION.—For purposes of section 1(b) of the Natural Gas Act the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is—

(i) pursuant to any order under section 302(c) or section 303 (b), (c), (d), or (h) of this Act; [or]

(ii) authorized by the Commission under section 311(a) of this Act;

(iii) authorized under section 319 or 321 of this Act; or

(iv) transported by an intrastate pipeline, whether voluntarily or as the result of an order by a state regulatory commission, for any party under contract carriage terms, regardless of the source or ultimate destination of such gas.

(B) NATURAL-GAS COMPANY.—For purposes of the Natural Gas Act, the term "natural-gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

(b) CHARGES DEEMED JUST AND REASONABLE.—

(1) SALES.—

(A) FIRST SALES.—Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any first sale of natural gas shall be deemed to be just and reasonable if—

(i) such amount does not exceed the applicable maximum lawful price established under title I of this Act; [or]

(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to subtitle B of title I of this Act; *or*

(iii) such amount is the price under section 131(b)(1) or (c)(1).

(B) EMERGENCY SALES.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any sale authorized under section 302(a) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established under such section and applicable to such sale.

(C) SALES BY INTRASTATE PIPELINES.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in

any sale authorized by the Commission under section 311(b) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established by the Commission and applicable to such sale.

(D) ASSIGNMENTS.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid pursuant to the terms of any contract with respect to that portion of which the Commission has authorized an assignment authorized under section 312(a) shall be deemed to be just and reasonable if such amount does not exceed the applicable maximum lawful price established under title I of this Act.

(E) AFFILIATED ENTITIES LIMITATION.—For purposes of paragraph (1), in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable if, in addition to satisfying the requirements of such paragraph, such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

(2) OTHER CHARGES.—

(A) ALLOCATION.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 303 (b), (c), or (d) of this Act shall be deemed to be just and reasonable if such amount is prescribed by the President under section 303(h)(1).

(B) TRANSPORTATION.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 311(a) of this Act shall be deemed to be just and reasonable if such amount does not exceed that approved by the Commission under such section.

(c) GUARANTEED PASSTHROUGH.—

(1) CERTIFICATE MAY NOT BE DENIED BASED UPON PRICE.—The Commission may not deny, or condition the grant of, any certificate under section 7 of the Natural Gas Act based upon the amount paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.

(2) RECOVERY OF JUST AND REASONABLE PRICES PAID.—For purposes of sections 4 and 5 of the Natural Gas Act, the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas if—

(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, and

(B) such recovery is not inconsistent with any requirement of any rule under section 201 (including any amendment under section 202),

except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

(3) PRUDENT PURCHASE RULE.—The Commission may not deny any interstate pipeline recovery of the amounts paid for purchases of natural gas under contracts for the first sale of natural gas entered into or renegotiated during the period specified in subparagraph (C) on the grounds that the amounts paid were excessive due to abuse or similar grounds, if such amounts are prudent purchases as defined herein.

(A) For purposes of this paragraph, the term "prudent purchases" shall include amounts paid with respect to purchases of natural gas if—

(i) the weighted average amount paid for such purchases during any month does not exceed 110 per centum of the free market price indicator in effect during that month exclusive of any allowance established under the provisions of section 110 of this Act, or

(ii) the amount paid for such purchase—

(aa) matches the terms of an offer made by another party where the pipeline purchaser has a right of first refusal for such gas under section 318(a), or

(bb) is paid pursuant to a right of first offer under section 318(b).

(B) During any month in which the weighted average amount paid for purchases of natural gas under contracts entered into or renegotiated during the period specified in subparagraph (C) exceeds 110 per centum of the free market price indicator in effect during that month, the Commission may determine that any amount paid in excess of 110 per centum of such free market price indicator may be recovered by such pipeline, subject to the requirements of paragraph (2). In making this determination, the Commission shall consider—

(i) the reasonable availability of lower cost supplies of natural gas to such pipeline, and

(ii) the necessity of incurring such costs in order to enable such pipeline to acquire the supplies of natural gas necessary to render adequate service to its existing customers.

(C) The provisions of this paragraph shall be effective for thirty-six months beginning on the first day of the eighth full month after the date of enactment of this paragraph.

(D) If the amounts paid for purchases of natural gas under contracts entered into or renegotiated during the periods specified in subparagraph (C) are prudent purchases pursuant to subparagraph (A), or if the Commission determines pursuant to subparagraph (B) that any amount paid in excess of 110 per centum of such free market price indicator may be recovered, then such amounts shall be deemed to be just and reasonable for the purposes of sections 4 and 5 of the Natural Gas Act.

(E) Notwithstanding section 4(e) of the Natural Gas Act, any increase in the rates of a pipeline that may be recov-

ered under this paragraph shall go into effect upon the date of filing subject to refund with interest.

(F) AFFILIATED PRODUCTION.—No interstate pipeline may recover any amounts paid for purchases of natural gas under contracts renegotiated with an affiliated producing entity unless such interstate pipeline has renegotiated contracts with non-affiliated producing entities commensurately.

(G) REDUCTIONS IN PURCHASED GAS COSTS.—Within sixty days of the enactment of this section, the Commission shall promulgate rules providing for the automatic passthrough of any reductions in amounts paid for purchases of natural gas realized by an interstate pipeline as a result of—

(i) take or pay reductions pursuant to section 316,

(ii) price reductions pursuant to section 131, or

(iii) any other reductions in amounts paid for natural gas.

(d) LIMITATION OF COMMISSION JURISDICTION OVER INTRASTATE TRANSACTIONS.—

(1) GENERAL RULE.—No intrastate pipeline or local distribution company shall be subject to the jurisdiction of the Commission under the Natural Gas Act by reason of purchasing natural gas in a covered transaction regardless of whether the purchase occurs in the state of receipt.

(2) SUBSEQUENT TRANSACTIONS.—Any transportation or sale of natural gas purchased in a covered transaction described in paragraph (1) of this subsection which occurs beyond the point at which such gas is received in the facilities of the purchaser in the covered transaction or received for its account in the facilities of another intrastate pipeline or local distribution company located in the state of receipt shall not be in interstate commerce (within the meaning of the Natural Gas Act) and shall not be subject to the jurisdiction of the Commission under the Natural Gas Act to the extent that such gas remains in the state of receipt.

(3) NATURAL-GAS COMPANY.—For purposes of the Natural Gas Act, the term "natural-gas company" (as defined in section 2(6) of that Act) shall not include any person by reason of, or with respect to, any transportation or sale of natural gas if the transportation or sale is not subject to the jurisdiction of the Commission solely by reason of paragraph (2) of this subsection.

(4) STATE OF RECEIPT RULE.—

"(A) GENERAL RULE.—For purposes of this subsection, natural gas shall be deemed to remain in the state of receipt if the gas is not transported outside the state of receipt unless such transportation occurs in connection with—

(i) transportation authorized under sections 302(a), 311(a), 319, or 321 of this Act, or

(ii) a sale or assignment authorized under sections 311(b)(8) or 312 of this Act.

(B) DEFINITION.—For purposes of this subsection, the term "state of receipt" means the state in which the intra-

state pipeline or local distribution company operates and has its facilities.

(5) DEFINITION OF COVERED TRANSACTION.—For purposes of this subsection, the term "covered transaction" means the purchase of natural gas in—

(A) a first sale of gas—

(i) which is not subject to the jurisdiction of the Commission under the Natural Gas Act by reason of subparagraph (A) or (B) of paragraph (1) of subsection (a),

(ii) which is produced from the Outer Continental Shelf,

(B) a sale authorized under section 311(b),

(C) an assignment authorized under section 312, or

(D) a sale for resale by any person not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act.

(6) APPLICABILITY OF NATURAL GAS ACT.—Nothing herein shall exempt any person from the requirements of sections 4, 5, or 7 of the Natural Gas Act, except as is specifically provided in this Act.

(e) NONDISCRIMINATION PROVISION.—The Commission may not condition or deny any authorization of the sale or transportation of natural has under this Act or the Natural Gas Act on the basis of whether the gas is consumed in the interstate market or the intrastate market.

SEC. 602. EFFECT ON STATE LAWS.

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POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

AN ACT To amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

[Tariff matters relating to bobsleds and luges not shown.]

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Powerplant and Industrial Fuel Use Act of 1978".

[42 U.S.C. 8301 nt.]

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL PROVISIONS

Sec. 101. Short title; table of contents.
Sec. 102. Findings; statement of purposes.
Sec. 103. Definitions.
Sec. 104. Territorial application.

TITLE II—NEW FACILITIES

SUBTITLE A—PROHIBITIONS

[Sec. 201. New electric powerplants.]
[Sec. 202. New major fuel-burning installations.]

SUBTITLE B—EXEMPTIONS

Sec. 211. Temporary exemptions.
Sec. 212. Permanent exemptions.
Sec. 213. General requirements for exemptions.
Sec. 214. Terms and conditions; compliance plans.

TITLE III—EXISTING FACILITIES

SUBTITLE A—PROHIBITIONS

Sec. 301. Existing electric powerplants.
[Sec. 302. Existing major fuel-burning installations.]
Sec. 303. Rules relating to case-by-case and category prohibitions.

SUBTITLE B—EXEMPTIONS

Sec. 311. Temporary exemptions.
Sec. 312. Permanent exemptions.
Sec. 313. General requirements for exemptions.
Sec. 314. Terms and conditions; compliance plans.

TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

[Sec. 401. Authority to prohibit use of natural gas in certain boilers used for space heating.]
[Sec. 402. Prohibition on use of natural gas for decorative outdoor lighting.]
Sec. 403. Conservation in Federal facilities, contracts, and financial assistance programs.
Sec. 404. Emergency authorities.
[Sec. 405. Authority to restrict increased use of petroleum by existing powerplants.]

TITLE V—SYSTEM COMPLIANCE OPTION

Sec. 501. Electric utility system compliance option.

TITLE VI—FINANCIAL ASSISTANCE

Sec. 601. Assistance to areas impacted by increased coal or uranium production.
Sec. 602. Loans to assist powerplant acquisitions of air pollution control equipment.

TITLE VII—ADMINISTRATION AND ENFORCEMENT

SUBTITLE A—PROCEDURES

Sec. 701. Administrative procedures.
Sec. 702. Judicial review.

SUBTITLE B—INFORMATION AND REPORTING

Sec. 711. Information.
Sec. 712. Compliance reports.

SUBTITLE C—ENFORCEMENT

Sec. 721. Notice of violation; other general provisions.
Sec. 722. Criminal penalties.
Sec. 723. Civil penalties.
Sec. 724. Injunctions and other equitable relief.
Sec. 725. Citizen suits.

SUBTITLE D—PRESERVATION OF CONTRACTUAL RIGHTS

Sec. 731. Preservation of contractual rights.

SUBTITLE E—STUDIES

Sec. 741. National coal policy study.
Sec. 742. Coal industry performance and competition study.

Sec. 743. Impact on employees.
Sec. 744. Study of compliance problems of small electric utility systems.
Sec. 745. Emissions monitoring.
Sec. 746. Socioeconomic impacts of increased coal production and other energy development.
Sec. 747. Use of petroleum, and natural gas in combustors.

SUBTITLE F—APPROPRIATIONS AUTHORIZATION

Sec. 751. Authorization of appropriations.

SUBTITLE G—COORDINATION WITH OTHER PROVISIONS OF LAW

Sec. 761. Effect on environmental requirements.
Sec. 762. Effect of orders under section 2 of ESECA; amendments to ESECA.
Sec. 763. Environmental impact statements under NEPA.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Coal reserves disclosure.
Sec. 802. Coal preparation facilities.
Sec. 803. Railroad rehabilitation for carriage of coal.
Sec. 804. Office of Rail Public Counsel.
Sec. 805. Retroactive application of certain remedial orders.
Sec. 806. Annual report.
Sec. 807. Submission of reports.
"Sec. 808. Electric utility conservation plan.".

TITLE IX—EFFECTIVE DATES

Sec. 901. Effective date.
Sec. 902. Interim petition and consideration for certain exemptions.

SEC. 102. FINDINGS; STATEMENT OF PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing [and new] electric powerplants [and major fuel-burning installations]; and

(2) the purposes of this Act are furthered in cases in which coal or other alternate fuels are used by electric powerplants [and major fuel-burning installations], consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) STATEMENT OF PURPOSES.—The purpose of this Act, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

(2) to conserve natural gas and petroleum for uses, other than electric utility or other industrial or commercial generation of steam or electricity, for which there are no feasible alternative fuels or raw material substitutes;

(3) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum as a primary energy source;

(4) to the extent permitted by this Act, to encourage the use of synthetic gas derived from coal or other alternate fuels;

(5) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(6) to prohibit or, as appropriate, minimize the use of natural gas and petroleum as a primary energy source and to conserve such gas and petroleum for the benefit of present and future generations;

(7) to encourage the modernization or replacement of existing [and new] electric powerplants [and major fuel-burning installations] which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(8) to require that existing [and new] electric powerplans [and major fuel-burning installations] which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this Act comply with applicable environmental requirements;

(9) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this Act by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(10) to insure that adequate supplies of natural gas are available for essential agricultural uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(11) to reduce the vulnerability of the United States to energy supply interruptions; and

(12) to regulate interstate commerce.

SEC. 103. DEFINITIONS.

(a) Unless otherwise expressly provided, for the purposes of this Act—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "person" means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term "natural gas" means any fuel consisting in whole or in part of—

(i) natural gas;

(ii) liquid petroleum gas;

(iii) synthetic gas derived from petroleum or natural gas liquids; or

(iv) any mixture of natural gas and synthetic gas.

(B) The term "natural gas" does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality of quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b); or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term "petroleum" means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term "coal" means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(6) The term "alternate fuel" means electricity or any fuel, other than natural gas or petroleum, and includes—

(A) petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms "electric powerplant" and "powerplant" mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more electric generation units which are located at the same site and which is the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) For purposes of subparagraph (A), the term "electric generating unit" does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generating of which is sold or exchanged for resale, as determined by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term "new electric powerplant" means—

(A) any electric powerplant for which construction or acquisition began on a date on or after the date of enactment of this Act; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this Act without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term "existing electric powerplant" means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this Act as an existing electric powerplant shall not be treated thereafter as a new electric powerplant merely by reason of a transfer of ownership.

(10)(A) The terms "major fuel-burning installation" and "installation" means a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) The terms "major fuel-burning installation" and "installation" do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule to be appropriate.

23-387 O—83——15

(11) The term "new major fuel-burning installation" means—

(A) any major fuel-burning installation on which construction or acquisition began on a date on or after the date of the enactment of this Act; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this Act without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term "existing major fuel-burning installation" means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States, or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States,

where coal storages is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term "construction or acquisition began" means, when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this Act—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary; *and*

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority) [; or].

[(III) in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary).]

(14) The term "construction" means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term "primary energy source" means the fuel or fuels used by any existing [or new] electric powerplant [or major fuel-burning installation], except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

[(16) The term "site limitation" means, when used with respect to any powerplant or installation, any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant or installation, such as—

[(A) inaccessibility to coal or other alternate fuels;

[(B) lack of transportation facilities for coal or other alternate fuels;

[(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

[(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant or installation, including lack of pollution control equipment or devices necessary to assure compliance with applicable environmenal requirements; and

[(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmenal requirements.]

[(17)] *(16)* The term "applicable environmental requirements" includes—

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, or the National Environmental Policy Act of 1969.

[(18)(A) The term "peakload powerplant" means a powerplant, the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

[(B) The term "intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

[(C) The term "base load powerplant" means a powerplant, the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

[(D) Not later than 90 days after the date of the enactment of this Act, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant's design capacity may be determined for purposes of this paragraph.]

[(19) The term "cogeneration facility" means an electric powerplant or a major fuel-burning installation which produces—

[(A) electric power; and

[(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.]

[(20)] *(17)* The term "cost", unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant [or major fuel-burning installation], discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric powerplant, such costs shall take into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution or electic power within such system.

[(21)] *(18)* The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electricity by any State regulated electric utility.

[(22)] *(19)* The term "air pollution control agency" has the same meaning as given such term by section 302(b) of the Clean Air Act.

[(23)] *(20)* The term "electric utility" means any person including any affiliate, or Federal agency which sells electric power.

[(24)] *(21)* The term "affiliate", when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person.

[(25)] *(22)* The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

[(26)] *(23)* The term "Btu" means British thermal unit.

[(27)] (*24*) The term "Mcf" means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

[(28)] (*25*) The term "mixture", when used in relation to fuels used in a unit, means a mixture of such fuels or combination of such fuels used simultaneously or alternately in such unit.

[(29) The term "fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.]

(b) SPECIAL RULES RELATING TO DEFINITIONS OF NATURAL GAS AND ALTERNATE FUEL.—(1) Subject to paragraph (2), natural gas which is to be used by a powerplant [or major fuel-burning installation] shall, for purposes of this Act (other than this subsection), be excluded from the definition of "natural gas" under subsection (a)(3)(B)(iii) and shall be included within the definition of "alternate fuel" under subsection (a)(6) if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, or local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved, [except that for purposes of the prohibition under section 201(2) against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented].

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant [or major-fuel burning installation] shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

[(3) In the case of any boiler subject to a prohibition under section 401, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.]

[(4)] *(3)* For purposes of this subsection, the term "pipeline" means any interstate or intrastate pipeline or local distribution company.

SEC. 104. TERRITORIAL APPLICATION.

The provisions of this Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except [that—

[(1) the provisions of titles II and III (other than section 301) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

[(2) the provisions of section 301 shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia.] *Hawaii and Alaska.*

TITLE II—NEW FACILITIES

Subtitle A—Prohibitions

[SEC. 201. NEW ELECTRIC POWERPLANTS.

[Except to such extent as may be authorized under subtitle B—

[(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

[(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy source.]

[SEC. 202. NEW MAJOR FUEL-BURNING INSTALLATIONS.

[(a) GENERAL PROHIBITION.—Except to such extent as may be authorized under subtitle B, natural gas or petroleum shall not be used as a primary energy source in a new major fuel-burning installation consisting of a boiler.

[(b) AUTHORITY OF SECRETARY TO PROHIBIT NONBOILERS FROM USING NATURAL GAS OR PETROLEUM.—(1) The Secretary may, by rule, prescribe categories (identified in such rules) of new major fuel-burning installations, other than boilers, in which natural gas or petroleum, or both, shall be prohibited from being used as a primary energy source. In identifying categories of new major fuel-burning installations pursuant to this paragraph, the Secretary shall take into account any special circumstances or characteristics of each category of such installations (such as the technical feasibility of burning coal or other alternate fuels and the size or geographic location of such installations). The application of any such final rule in the case of any new major fuel-burning installation subject to such rule shall be stayed pending a resolution (including

judicial review) of any petition for an exemption for such installation which is filed with the Secretary not later than 60 days after such final rule is published under section 702(a). Any such final rule shall not apply in the case of any installation with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under subtitle B).

[(2)(A) The Secretary may, by order, prohibit the use of natural gas or petroleum, or both, as a primary energy source in any new major fuel-burning installation, other than a boiler, if such installation is not, at the time of the issuance of the proposed order, in a category identified in a final rule issued under paragraph (1).

[(B) Subject to subparagraph (C), the Secretary shall not issue a final order under this paragraph with respect to any installation if it is demonstrated that there would have been granted an exemption for such installation if such prohibition had been established by rule pursuant to paragraph (1) rather than by order pursuant to this paragraph, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as such temporary exemption would have terminated.

[(C) In any case in which an order is not issued by reason of subparagraph (B) or in which the effective date of such order is delayed under subparagraph (B), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 214(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.

[(3) A prohibition under this subsection shall only apply with respect to an installation for which construction or acquisition began on or after the date of the publication under section 701(b) of the proposed rule or order establishing the prohibition. Any installation not subject to such a prohibition because of the preceding sentence shall be considered an existing major fuel-burning installation for purposes of title III.]

Subtitle B—Exemptions

SEC. 211. TEMPORARY EXEMPTIONS.

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SEC. 212. PERMANENT EXEMPTIONS.

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SEC. 213. GENERAL REQUIREMENTS FOR EXEMPTIONS.

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SEC. 214. TERMS AND CONDITIONS; COMPLIANCE PLANS.

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TITLE III—EXISTING FACILITIES

Subtitle A—Prohibitions

SEC. 301. EXISTING ELECTRIC POWERPLANTS.

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[SEC. 302. EXISTING MAJOR FUEL-BURNING INSTALLATIONS.

[(a) AUTHORITY OF SECRETARY TO PROHIBIT WHERE COAL OR ALTERNATE FUEL CAPABILITY EXISTS.—The Secretary may prohibit, in accordance with section 303 (a) or (b), the use of petroleum or natural gas, or both, as a primary source in any existing major fuel-burning energy installation, if the Secretary finds that—

[(1) such installation has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

[(2) such installation has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without—

[(A) substantial physical modification of the unit, or

[(B) substantial reduction in the rated capacity of the unit; and

[(3) it is financially feasible to use coal or another alternate fuel as a primary energy source in such installation.

The requirement of paragraph (1) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b) and is published with such notice.

[(b) AUTHORITY OF SECRETARY TO PROHIBIT EXCESSIVE USE IN MIXTURES.—

[(1) In the case of any existing major fuel-burning installation in which the Secretary finds it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source the Secretary may prohibit, in accordance with section 303(a), the use of petroleum or natural gas, or both, in such installation in amounts in excess of the minimum percentage of the total Btu heat input of the primary energy sources needed to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

[(2) The percentage determined by the Secretary under paragraph (1) shall not be less than 25 percent.]

SEC. 303. RULES RELATING TO CASE-BY-CASE AND CATEGORY PROHIBITIONS.

(a) CASE-BY-CASE PROHIBITIONS.—(1) Except to the extent authorized by subsection (b), the Secretary shall prohibit any powerplant [or installation] from using natural gas or petroleum under the authority granted him under section 301 (b) or (c) [or 302] only by means of a final order issued by him which shall be limited to the particular powerplant [or installation] involved.

(2) The Secretary may issue such a final order only with respect to a powerplant [or installation] which is not, at the time the proposed order is issued, covered by a final rule issued under section (b).

[(3)(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant [or installation] if it is demonstrated that such powerplant [or installation] would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

[(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 314(a)) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.]

(b) PROHIBITIONS APPLICABLE TO CATEGORIES OF FACILITIES.—[(1) The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 301(b) or 302(a)—

[(A) in the case of any category of existing electric powerplants identified in such rule; and

[(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu's per hour or greater which are identified in such rule.]

(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 301(b) in existing electric powerplants.

(2) Each powerplant [or installation] to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants [or installations] (such as the intermittent use, size, age, or geographic location of such powerplants [or installations]). [Any such rules shall not apply in the case of any existing electric powerplant [or major fuel-burning installation]—

[(A) pending a resolution (including judicial review) of any petition for any exemption for such powerplant [or installation] which may be filed with the Secretary not later than 60 days after such final rule is published under section 702(a); or

[(B) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued by reason of subsection (a)(3)).]

Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.

Subtitle B—Exemptions

SEC. 311. TEMPORARY EXEMPTIONS.

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SEC. 312. PERMANENT EXEMPTIONS.

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SEC. 313. GENERAL REQUIREMENTS FOR EXEMPTIONS.

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SEC. 314. TERMS AND CONDITIONS; COMPLIANCE PLANS.

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TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

[SEC. 401. AUTHORITY TO PROHIBIT USE OF NATUAL GAS IN CERTAIN BOILERS USED FOR SPACE HEATING.

[(a) EXISTING BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any existing boiler (other than a major fuel-burning installation) if he finds that—

[(1) such boiler is used to produce steam for space heating purposes;

[(2) such boiler consumes 300 Mcf or more of natural gas per day on a peak day;

[(3) such boiler has, or previously had, the technical capability to use petroleum as a primary energy source;

[(4) such boiler has the technical capability to use petroleum as a primary energy source or it could have such capability without—

[(A) substantial physical modification of the boiler, or

[(B) substantial reduction in the rated capacity of the unit;

[(5) it is financially feasible for such boiler to use petroleum as a primary energy source; and

[(6) such prohibition is consistent with the purposes of this Act.

[The requirement of paragraph (3) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 701(b).

[(b) NEW BOILERS.—The Secretary may prohibit the use of natural gas as a primary energy source in any new boiler (other than a major fuel-burning installation) if he determines that—

[(1) such boiler will be used to produce steam for space heating purposes;

[(2) such boiler will, by design, be capable of consuming 300 Mcf or more of natural gas per day; and

[(3) such prohibition is consistent with the purposes of this Act.

[(c) EXEMPTION.—The Secretary shall exempt any person from any prohibition prescribed pursuant to subsection (a) or (b) if such person demonstrates to the Secretary that an adequate and reliable

source of petroleum is not likely to be available to such person during the period of the exemption.

[(d) DEFINITIONS.—

[(1) The term "new boiler" means any boiler for which there was not a commitment for construction or acquisition as of the date of the pubication under section 701(b) of the proposed rule of order establishing the prohibition.

[(2) The term "existing boiler" means any boiler other than a new boiler.

[(e) METHOD OF PROHIBITION.—(1)(A) Except to the extent authorized by paragraph (2), the Secretary shall prohibit boiler fuel use of natural gas under the authority granted him in subsection (a) or (b) only by means of a final order issued by him which shall be limited to the particular boiler involved.

[(B) The Secretary may issue such and order only with respect to boiler which is not, at the time the proposed order is issued, covered by a final rule issued under paragraph (2).

[(C) The Secretary shall not issue a final order under this subsection with respect to any boiler if it is denonstrated that an exemption under subsection (C) would have been granted with respect to such boiler if such prohibiton had been established by rule pursuant to paragraph (2) rather than by order.

[(2)(A) The Secretary may, by rule, prohibit the use of natural gas under the authority of subsection (a) or (b) in the case of any category of boilers identified in such rule.

[(B) Any existing boiler to be covered by any rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

[(C) In prescribing any rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of boilers (such as the technical feasibilty of burning petroleum and the size, age or geographic location of such boilers). Any such final rule shall not apply in the case of any boiler—

[(i) subject to such rule pending a resolution of any petition (including judicial review) for any exemption for such boiler which may be filed with the Secretary not later than 60 days after such rule is published under section 701(b); or

[(ii) which respect to which a comparagle prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under subsection (c)).]

[SEC. 402. PROHIBITION ON USE OF NATURAL GAS FOR DECORATIVE OUTDOOR LIGHTING.

[(a) PROHIBITION ON INSTALLATION OF NEW OUTDOOR LIGHTING.—Effective beginning on the date of the enactment of this Act, no local distribution company, or any industrial user of natural gas local distribution company, or any industrial user of natural gas who obtains such gas under a contract between such user and a natural gas pipeline, or any agent thereof, shall install any outdoor lighting fixture using natural gas.

[(b) PROHIBITION ON SELLING NATURAL GAS TO BE USED IN OUTDOOR LIGHTING.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary shall, by rule, prohibit any

local distribution company (unless an exemption has been obtained under subsection (c)) from providing natural gas service for use in outdoor lighting "(other than any outdoor lighting fixture which was installed before the date of the enactment of this Act for use in connection with a residence and for which natural gas was being provided on such date of enactment)"

[(A) effective on the date such final rule is issued, in the case of and residential, commercial, or industrial customer unless a later effective date is applicable under subparagraph (B) or (C) of this paragraph;

[(B) effective beginning 180 days after the date such final rule is issued, in the case of any industrial or commercial structure for which natural gas was being provided by such company for outdoor lighting use on the date of the enactment of this Act; and

[(C) effective beginning January 1, 1982, in the case of "any municipal outdoor lighting fixture" for which natural gas was being provided by such company for outdoor lighting use on the date of the enactment of this Act.

[(2) the rule prescribed under paragraph (1) shall provide that any industrial user of natural gas who obtains such natural gas under a contract between such user and a natural gas pipeline shall be prohibited from using such natural gas for outdoor lighting (unless an exemption has been obtained under subsection (c))—

[(A) effective 180 days after the date such final rule takes effect, if the industrial user was using natural gas for outdoor lighting on the date of the enactment of this Act; or

[(B) beginning on the date such final rule takes effect, if such industrial user was not so using natural gas on such date.

[(c) EXEMPTIONS.—(1) The Secretary shall, by order—

[(A) exempt from the prohibition under subsection (a) the installation of a replacement lighting fixture for any memorial light or light or light of historical significance, and

[(B) permanently exempt from a prohibition under subsection (b) the use of natural gas in any memorial light of historical significance.

If a petition for such exemption is made by a Federal, State, or local government agency or by any appropriate historical association.

[(2) The Secretary shall, by order—

[(A) exempt from the prohibition under subsection (a), upon a petition thereof, the installation of a replacement lighting fixture for any natural gas outdoor lighting, and

[(B) permanently exempt from a prohibition under subsection (b), upon a petition therefor, use of natural gas for outdoor lighting,

which is used for commerical, purposes, which is of a traditional nature, and which conforms with the cultural or architectural style of the area in which such light is located.

[(3) The Secretary shall, by order, exempt any local distribution company or industrial user described in subsection (b)(2), from the rule required to be prescribed under subsection (b) concerning the continuation of such service in effect on the date of the enactment of this Act upon the filing of a petition therefor by such pipe-

line or company, or by any other interested person. Such exemption shall be for such period as, and to the extent that, the Secretary finds—

[(A) such exemption is necesary to protect the safety of persons or property;

[(B) such exemption is necessary to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists on the date of the enactment of this Act;

[(C) compliance with such rule would entail substantial expense and would not be cost justified; or

[(D) the issuance of the exemption is in the public interest and is consistent with the purposes of this Act.

[(4) Determinations on any petition for an exemption under this section shall be made under criteria which the Secretary shall establish by rule, which rule shall be prescribed not later than 180 days after the effective date of this Act.

[(d) PROCEDURES.—Rules and orders under this section shall be made in accordance with the provisions of section 553 of title 5, United States Code, except that determinations on any petition for exemption under this section shall be made only after interested persons have been afforded an opportunity for a public hearing. Under rules prescribed by the Secretary, the Secretary may stay the application of any prohibition under subsection (b) applicable to any person pending the resolution of any petition for an exemption for such person.

[(e) AUTHORITY MAY BE DELEGATED TO STATES.—(1) Under regulations prescribed by the Secretary, the responsibility and authority of the Secretary with regard to outdoor lighting under this section may be delegated to the appropriate regulatory authority of a State if he determines that such delegation would be consistent with the purposes of this section.

[(2) Any delegation under paragraph (1) shall be on terms and conditions prescribed by the Secretary and may be rescinded by the Secretary at any time by notifying the State authority of such rescission.

[(3) Any State authority to which the Secretary has delegated authority under this subsection shall prepare and transmit reports to the Secretary on a periodic basis (as determined by the Secretary) on actions taken to carry out the purposes of this section.

[(f)(1) For the purpose of discouraging the use of natural gas for outdoor lighting, each local distribution company which is subject to subsection (a) or (b) shall, in accordance with rules promulgated by the Secretary—

[(A) establish a reasonable and simple method, as determined by each such company, by which the company shall periodically inform its customers about the amount of natural gas consumed by outdoor lighting and the annual cost of such gas for such lighting; and

[(B) report to the Secretary the method established under subparagraph (A).

A company may establish a method which provides for reporting such information on the basis of estimates where actual information is not readily available.

[(2) The Secretary shall propose the rules referred to in paragraph (1) as promptly as possible after the date of the enactment of this subsection, and such rules shall take effect not later than the ninetieth day after they are proposed. In promulgating such rules, the Secretary shall, to the greatest extent feasible, consult with the appropriate regulatory authority of the States and the local distribution companies who will be subject to the rules.

[(g) DEFINITIONS.—As used in this section—

[(1) The term "outdoor lighting" means lighting by any stationary source which is not located inside any building.

[(2) The term "pipeline company" means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

[(3) The term "local distribution company" means any person engaged in the business of transportation and local distribution of natural gas and the sale of natural gas for ultimate consumption.

[(4) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with any such unit.]

SEC. 403. CONSERVATION IN FEDERAL FACILITIES, CONTRACTS, AND FINANCIAL ASSISTANCE PROGRAMS.

(a) FEDERAL FACILITIES.—(1) Each Federal agency owning or operating any electric powerplant[, major fuel-burning installation, or other unit] shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this Act, to the same extent as would be the case if such powerplant[, installation, or unit] were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant[, installation, or other unit] owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant[, installation, or unit] involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review. [Any powerplant, installation, or other unit permitted to use natural gas or petroluem under an exemption under this paragraph shall establish and carry out effective fuel conservation measure, as determined by the Secretary.]

[(3) Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a non-governmental person.]

(b) FEDERAL CONTRACTS AND FINANCIAL ASSISTANCE.—(1) In order to implement the purposes of this Act, the President shall, not later than 30 days after the effective date of this Act, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this Act relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under other sections of this Act if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

(c) ANNUAL REPORT.—The President shall annually submit a detailed report to each House of the Congress on the action taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section.

SEC. 404. EMERGENCY AUTHORITIES.

(a) COAL ALLOCATION AUTHORITY.—(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and condi-

tions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term "coal" means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) EMERGENCY PROHIBITION ON USE OF NATURAL GAS OR PETROLEUM.—If the President declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 110(d) of the Clean Air Act, required by such prohibition shall be issued only in accordance with section 110(f) of the Clean Air Act.

(c) EMERGENCY STAYS.—The President may, by order, stay the application of any provision of this Act, or any rule or order thereunder, applicable to any [new or] existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) DURATION OF EMERGENCY ORDERS.—(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 551 of the Energy Policy and Conservation Act. Such order shall be subject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 551 of the Energy Policy and Conservation Act.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of title II of the Act of September 14, 1976 (Public Law 94-412; 50 U.S.C. 1621 and following).

(e) DELEGATION OF AUTHORITY PROHIBITED.—The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) PUBLICATION AND REPORTS TO CONGRESS OF ORDERS.—Any order issued under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

[(g) EMERGENCY USES OF NATURAL GAS OR PETROLEUM.—(1) During a temporary emergency condition (other than emergency conditions provided for under section 103(a)(15)), any person operating a peakload powerplant or a major fuel-burning installation may, under rules prescribed by the Secretary, use natural gas or petroleum as a primary energy source in such powerplant or installation, notwithstanding any prohibition otherwise imposed by or pursuant to this Act, if—

[(A) such person notifies the Secretary within 24 hours after commencing such use; and

[(B) the Secretary has not notified such person that in his judgment the emergency condition does not exist or does not warrant the use of natural gas or petroleum involved.

[(2) Within 90 days after the effective date of this Act, the Secretary shall, by rule, prescribe the form and content of such notices and the conditions which may constitute a temporary emergency.

[(3) Hours of operation allowed under paragraph (1) shall not be included in the peakload powerplant's operating hours for the purposes of the penalties in section 723(b).]

[SEC. 405. AUTHORITY TO RESTRICT INCREASED USES OF PETROLEUM BY EXISTING POWERPLANTS.

[The Secretary shall, by rule, require that, in the case of any existing electric powerplant which during calendar year 1977 uses coal or another alternate fuel as a primary energy source, petroleum may not be used in such powerplant as a primary energy source in excess of the quantities of petroleum used in such powerplant as a primary energy source during such year unless a permit is issued by the Secretary authorizing such increased use of petroleum. Such permit shall be issued if—

[(1) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary (A) that the powerplant cannot comply with the requirements of the Clean Air Act, including any applicable implementation plan, as defined in section 110(d) of the Clean Air Act, without the issuance of such permit and (B) the petitioner has established the duration of the need for increased petroleum to comply with such plan; and

[(2) the appropriate State regulatory authority has certified to the Secretary that the increased use of petroleum by such powerplant is necessary to prevent impairment of reliability of service.

[Such permit shall be issued only for such period as the Secretary determines necessary under paragraph (1) or (2) for such increased use of petroleum.]

TITLE V—SYSTEM COMPLIANCE OPTION

SEC. 501. ELECTIC UTILITY SYSTEM COMPLIANCE OPTION.

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TITLE VI—FINANCIAL ASSISTANCE

SEC. 601. ASSISTANCE TO AREAS IMPACTED BY INCREASED COAL OR URANIUM PRODUCTION.

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SEC. 602. LOANS TO ASSIST POWERPLANT ACQUISITIONS OF AIR POLLUTION CONTROL EQUIPMENT.

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TITLE VII—ADMINISTRATION AND ENFORCEMENT

Subtitle A—Procedures

SEC. 701. ADMINISTRATIVE PROCEDURES.

(a) GENERAL RULE MAKING.—Except to the extent otherwise provided in this section or other provisions of this Act, rules prescribed under this Act shall be made in accordance with the procedures set forth in section 553 of title 5, United States Code.

(b) NOTICES OF RULES AND ORDERS IMPOSING PROHIBITIONS.—Before the Secretary prescribes any rule or issues any order imposing a prohibition under this Act (other than under section 402), he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant [or installation] required to be specifically identified inb such rule or order.

[(c) PETITIONS FOR EXEMPTIONS.—(1) Any petition for an exemption from any prohibition under this Act or for any permit under section 405, shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption or permit, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after the date of the enactment of this Act.]

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant or, where appropriate, major fuel-burning installation which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption or permit, shall issue a final order granting or denying the petition for such exemption or permit, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(4) Any order for the approval of a system compliance plan under section 501, and any petition for such an order, shall be treated for

purposes of this title the same as an order (or petition) for an exemption.

(d) PUBLIC COMMENT ON PROHIBITIONS [AND EXEMPTIONS].—(1) In the case of any proposed rule or order by the Secretary imposing a prohibition [or any petition for any order granting an exemption (or permit)] under this Act (other than under section 402), any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentation,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order [or in the consideration of such petition], and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

(e) TRANSCRIPT.—A transcript shall be kept of any public hearing made in accordance with this section.

(f) ENVIRONMENTAL PROTECTION AGENCY COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 402 or 404), [or a petition for an exemption (or permit) under this Act (other than under section 402 or 404),] shall be transmitted by the Secretary to the Administrator of the Environmenal Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act. In any such case, the Administrator of the Environmenal Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

[(g) FEDERAL TRADE COMMISSION COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 402 or 404) with respect to a major fuel-burning installation or a boiler subject to section 401 or a petition by such installation or boiler for an exemption (or permit) under this Act (other than under section 402 or 404), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission

shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).]

(h) COORDINATION WITH OTHER PROVISIONS OF LAW.—(1) Except as provided in sections 702(c)(4), 723(d)(5), and 724 of this Act, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this Act.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 404.

(3) The procedures applicable under this act shall not--

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this Act (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this Act, and declaring that such provision supersedes, in whole or in part, the procedures of this Act.

SEC. 702. JUDICIAL REVIEW.

(a) PUBLICATION AND DELAY OF PROHIBITION [OR EXEMPTION] TO ALLOW FOR REVIEW.—Any final rule or order prescribed by the Secretary imposing a prohibition [or granting an exemption (or permit)] under this Act shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

[(b) PUBLICATION OF DENIAL OF EXEMPTION OR PERMIT.—Any final order issued by the Secretary denying any petition for an exemption or a permit under this Act shall be published in the Federal Register, together with the reasons for such action.]

[(c)] *(b)* JUDICIAL REVIEW.—Any person aggrieved by any final rule or order referred to in subsection (a) or in section 404, [or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b),] may at any time before the 60th day after the date [such rule, order, or denial is published under subsection (a) or (b),] *such rule, or order is published under subsection (a),* file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review [the rule, order, or denial] *the rule or order* in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule or order [(or denial thereof)] may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, [any such rule, order, or denial] *any such rule or order* shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, United States Code, attorneys appointed by the Secretary may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 502(c) of the Department of Energy Organization Act.

Subtitle B—Information and Reporting

SEC. 711. INFORMATION.

(a) AUTHORITY OF SECRETARY.—For purposes of carrying out his responsibilities under this Act, the Secretary may require, under the authority of this Act or any other authority administered by him, any person owning, operating or controlling any electric powerplant [or major fuel-burning installation], or any other person otherwise subject to this Act to submit such information and reports of any kind of nature directly to the Secretary necessary to implement the provisions of this Act and insure compliance with the provisions of this Act, and any rule or order thereunder. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 11 of such Act.

(b) AUTHORITY OF PRESIDENT AND FEDERAL ENERGY REGULATORY COMMISSION.—In the case of responsibilities expressly given by this Act to the President or the Federal Energy Regulatory Commission, subsection (a) shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

SEC. 712. COMPLIANCE REPORT.

Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this Act shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this act may be filed.

Subtitle C—Enforcement

SEC. 721. NOTICE OF VIOLATION; OTHER GENERAL PROVISIONS.

(a) NOTICE OF VIOLATION.—(1) Whenever, on the basis of any information available, the Secretary finds that any person is in viola-

tion of any provision of this Act, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this Act for any act or omission occurring before the issuance of notice.

(b) INDIVIDUAL LIABILITY OF CORPORATE PERSONNEL.—Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this Act, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 722, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

[(c) LIABILITY FOR CERTAIN PEAKLOAD OPERATION.—No person shall be subject to any penalty under this subtitle with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

[(1) were unavailable for service—

[(A) due to unit or system outages; or

[(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

[(2) have not been operated other than to meet peakload demand.]

[(d)]*(c)* FEDERAL AGENCIES.—The provisions of sections 722 and 723 shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

SEC. 722. CRIMINAL PENALTIES.

Any person who willfully violates any provision of this Act (other than section 402), or any rule or order thereunder, shall be subject to a fine of not more than $50,000, or to imprisonment for not more than one year, or both, for each violation.

SEC. 723. CIVIL PENALTIES.

(a) GENERAL CIVIL PENALTY.—Any person who violates any provision of this Act (other than section 402), or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

[(b) CIVIL PENALTIES FOR OPERATION OR USE OF FUELS IN EXCESS OF EXEMPTION.—(1) In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas

used in operation of such powerplant in excess of that authorized in such exemption.

[(2) Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas which was used in excess of that use allowed by such exemption.]

(*b*)[(c)] PENALTIES FOR VIOLATION OF SECTION 402.—(1) Any person who violates any prohibition under subsection (b)(1) of section 402 with respect to providing of natural gas service to any person for use in outdoor lighting shall be subject to a civil penalty which shall be assessed by the Secretary and which shall not exceed $500 for each outdoor lighting fixture involved.

(2) Any industrial user who violates prohibition under subsection (b)(2) of section 402 shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 per day of violation for each outdoor lighting fixture involved which was used by an industrial customer, but not to exceed $5,000 per outdoor lighting fixture involved.

(3) The penalties under this subsection shall only apply in the case of a violation by any person who at the time of the violation had knowledge or reasonably should have had knowledge that the action involved was prohibited under section 402.

(*c*)[(d)] ASSESSMENT.—Before issuing an order assessing a civil penalty against any person under this Act, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review or such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall

promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, United States Code, or section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil ligigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this subsection.

SEC. 724. INJUNCTIONS AND OTHER EQUITABLE RELIEF.

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SEC. 725. CITIZENS SUITS.

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other relief (including relief against the Secretary or the agency head involved).

Subtitle D—Preservation of Contractual Rights

SEC. 731. PRESERVATION OF CONTRACTUAL INTEREST.

(a) RIGHT TO TRANSFER CONTRACTUAL INTERESTS.—(1) If any person receives natural gas, the use of which is prohibited by the provisions of [title II or] title III or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person receiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this system.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

(b) DETERMINATION OF CONSIDERATION.—(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consideration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interest pursuant to subsection (a)(1) and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining, the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method determining, such consideration. Upon the request of either such person, the Commission shall make such determination on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum consideration permitted as just compensation under this section. In prescribing the amount of, or method of determining consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contracts, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of

the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by application of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration permitted as just compensation under this section.

(c) RESTRICTIONS ON TRANSFERS UNENFORCEABLE—(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) or terminates such contract on the basis of such transfer, shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1).

(d) CONTRACTUAL OBLIGATIONS UNAFFECTED.—The person acquiring contractual interests transferred pursuant to subsection (a)(1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) DEFINITIONS.—For purposes of this section—

(1) The term "just compensation", when used with respect to any transfer of contractual interests authorized by subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1), in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant [or major fuel-burning installation], exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the re-

maining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant [or major fuel burning installation], which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term "just compensation", when used with respect to subsection (a)(2), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1), to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1), and (b) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term "contractual interests", with respect to a contract described in subsection (a)(1), includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term "State" means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term "interstate pipeline" means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act.

(6) The term "Commission" means the Federal Energy Regulatory Commission.

(7) The term "contract", when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) COORDINATION WITH THE NATURAL GAS ACT.—(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed just and reasonable for purposes of sections 4, 5, and 7 of the Natural Gas Act. The Commission shall not deny a pass-through by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interest is authorized under subsection (a)(1).

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1).

(4) Nothing is this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline on natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1). The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) VOLUME LIMITATION.—No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1), shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1), if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such contract but for the prohibition on the use of such natural gas under [title II or] title III of this Act or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) JUDICIAL REVIEW.—Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5, United States Code.

[42 U.S.C. 8441]

Subtitle E—Studies

SEC. 741. NATIONAL COAL POLICY STUDY.

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SEC. 742. COAL INDUSTRY PERFORMANCE AND COMPETITION STUDY.

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SEC. 743. IMPACT ON EMPLOYEES.

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SEC. 744. STUDY OF COMPLIANCE PROBLEM OF SMALL ELECTRIC UTILITY SYSTEMS.

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SEC. 745. EMISSION MONITORING.

(a) MONITORING PROGRAM.—The Administrator of the Environmental Protection Agency shall conduct, on a continuing basis, a program of monitoring, to the greatest extent possible and in accordance with the applicable authorities and provisions of the Clean Air Act, the emissions [from new and existing electric

powerplants and major fuel-burning installations] *from existing electric powerplants* required to use coal or other alternate fuels by reason of this Act or otherwise using coal or other alternate fuels and the effect thereof on the public health, safety, and welfare and the movement of such emissions in the atmosphere and their impact on land and water and other resources and the public health in various regions of the Nation. Such Administrator shall submit an annual report to the Congress on such program. In carrying out his responsibilities under this section, the Administrator of the Environmental Protection Agency shall consult with the other Federal and State agencies concerned with the health effects of such emissions.

(b) APPROPRIATIONS AUTHORIZATIONS.—There is authorized to be appropriated to the Administrator of the Environmental Protection Agency $2,000,000 in fiscal year 1979 for the report required under section 806.

SEC. 746. SOCIOECONOMIC IMPACTS OF INCREASED COAL PRODUCTION AND OTHER ENERGY DEVELOPMENT.

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SEC. 747. USE OF PETROLEUM AND NATURAL GAS IN COMBUSTORS.

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Subtitle F—Appropriations Authorization

SEC. 751. AUTHORIZATION OF APPROPRIATIONS.

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SUBTITLE G—COORDINATION WITH OTHER PROVISIONS OF LAW

SEC. 761. EFFECT ON ENVIRONMENTAL REQUIREMENTS.

(a) COMPLIANCE WITH APPLICABLE ENVIRONMENTAL REQUIREMENTS.—Except as provided in section 404, nothing in this Act shall be construed as permitting [any existing or new electric powerplant or major fuel-burning installation] *any existing electric powerplants* to delay or avoid compliance with applicable environmental requirements.

(b) LOCAL ENVIRONMENTAL REQUIREMENTS.—In the case of any [new or] existing facility—

(1) which is subject to any prohibition under this Act, and

(2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility [, except to the extent provided under section 212(b) or section 312(b);] and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

SEC. 762. EFFECT OF ORDERS UNDER SECTION 2 OF ESECA; AMENDMENTS TO ESECA.

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SEC. 763. ENVIRONMENTAL IMPACT STATEMENT UNDER NEPA.

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TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. COAL RESERVES DISCLOSURE.

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SEC. 802. COAL PREPARATION FACILITIES.

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SEC. 803. RAILROAD REHABILITATION FOR CARRIAGE OF COAL.

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SEC. 804. OFFICE OF RAIL PUBLIC COUNSEL.

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SEC. 805. RETROACTIVE APPLICATION OF CERTAIN REMEDIAL ORDERS.

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SEC. 806. ANNUAL REPORT.

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SEC. 807. SUBMISSION OF REPORTS.

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SEC. 808. ELECTRIC UTILITY CONSERVATION PLAN.

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TITLE IX—EFFECTIVE DATES

SEC. 901. EFFECTIVE DATES.

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SEC. 902. INTERIM PETITION AND CONSIDERATION FOR CERTAIN EXEMPTIONS.

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